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CrI.A.No.211 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2023

DELIVERED ON : 25.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.A.No.211 of 2022

... Appellant

Vs.

1.The Inspector of Police,
M-6, Manali Police Station,
Chennai.
(Crime No.242/2008).

... Respondents

PRAYER: Criminal Appeal filed under Section 372 of Criminal Procedure Code, 1973 to set aside the orders dated 19.04.2018 in S.C.No.110/2011 on the file of the Magalir Neethimandaram, (Fast Track Mahila Court), Tiruvallur.

For Appellant : Mr.R.Vijayaraghavan
For R1 : Mr.S.Sugendran
Additional Public Prosecutor
For RR2 & 3 : Mr.A.Sasidharan for
Mr.S.M.Nandhie Devan



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JUDGMENT

The mother of the deceased victim has filed the present appeal against the judgment and order of acquittal dated 19.04.2018 passed in S.C.No.110/2011 by the learned Sessions Judge, Magalir Neethimandaram, (Fast Track Mahila Court), Tiruvallur.

2. The accused 1 and 2 in S.C. No.110/2011 were charged for the offences punishable under Sections 498(A), 306 and 304(B) IPC.

3. In order to bring home the guilt of the accused the prosecution examined 14 witnesses and marked 14 documents and 3 Material Objects.

4. The case of the prosecution in a nutshell is as follows:

4.1. The victim aged 25 years was a resident of No.71, She was living with her husband (A1) in a joint family consisting of 3 sons including A1 and their respective wives along with her father-in-law. Her parents are living

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The victim and the accused

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4.2. On 19.03.2008 the mother of the victim

(P.W.2) received a call from Kamalesh, elder brother of the accused that her daughter met with a fire accident and was admitted to the Appollo Hospital at Tondiarpet. On receiving this call the parents of the victim, two brothers of the victim, viz., Dilip Kumar (P.W.1) and Vikas Kumar (P.W.3) and the wife of Dilip Kumar, rushed to the hospital.

was found fully burnt arousing suspicion as to the cause of fire accident.

4.3. According to Dilip Kumar (P.W.1), who is the defacto complainant, the Manali Police had not arrived in the hospital till he gave a written complaint (Ex.P1) to them. It was also his contention that his sister was harassed by her in-laws due to the fact that she had come to know of the illicit relationship between her husband (A1) and his sister-in-law (A2) who is actually married to , A1's elder brother.



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4.4. The deposition of P.W.1 to P.W.3 is that earlier in December 2007 the victim had confided to her mother (P.W.2) regarding the unusual happenings in her matrimonial house and that her continuing to live there became very difficult. It was then when her father brought her back home on 06.12.2007 stating that her grand father is not doing well. Her father-in-law at that point of time was not in station and when he returned back home on 16.12.2007, he called up the victim's father to find out regarding the victim leaving her matrimonial home. Subsequently he came down to the victim's house on the same day. The father of the victim had reportedly narrated the embarrassing situation in which his daughter was in the matrimonial home after seeing her husband in a compromising position with his own sister-in-law (A2). The father-in-law regretted for the same and also emphasized that it was a matter of family reputation. He also assured that there will be no such incident in future and that he would ensure a peaceful life for the victim. Based on this assurance, was sent back to her matrimonial home with her husband on the same day.



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4.5. It appears that the 'peaceful life' of the victim never materialised that she was a witness to the continuance of illicit relationship of her husband with his sister-in-law A2. On 14.02.2008 the victim had called up her mother (P.W.2) and told her that she was extremely distressed as both the accused were harassing her for which her mother consoled her reminding her of the assurance given by her father-in-law. On 17.03.2008 the victim called up her mother again and stated that she was being isolated, not allowed to talk over phone and also that she was troubled since no one else in the family was talking to her. The phone call got cut during the conversation which disturbed the mother of the victim and when she asked her husband to call the in-laws of the victim, there was no response to his calls.

4.6. Subsequently on 19.03.2008, they got the phone call from Kamalesh, the elder brother of A1 informing the fire accident and consequent admission in Apollo Hospital, Tondiarpet. In fact by the time P.W.1, the brother of the victim, could reach the hospital, the younger brother Vikas kumar (P.W.3) and her mother were in the hospital and saw



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his sister being brought to the hospital, in a fully burnt condition in a share

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auto. According to P.W.3 his sister was admitted in the hospital only at 3.49 p.m. and that when his parents were allowed to meet her in the ICU his mother had posed certain questions to her daughter, the victim, who could reply by way of gestures i.e. nodding her head. It was also the deposition of P.W.3 that the father-in-law of the victim had told him that he had bought 8 litres of kerosene to his house which again caused suspicion in the mind of P.W.3 as to why it was required when they had LPG connection in their house.

4.7. P.W.2's deposition had narrated the sequence of events which unfolded on that day. While in the hospital P.W.2 and her husband (since deceased) were permitted to meet their daughter who was in the ICU when her questions regarding the involvement of the accused and whether she would come back with her (P.W.2) after she recovers evoked an affirmative nodding of head and while the other two questions regarding whether anyone in the house came to her rescue and whether she wishes to go back to her matrimonial home after getting discharged from the hospital were



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responded by the victim with clear 'no' by way of nodding her head. Further

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P.W.2 also demonstrated as to how her daughter nodded her head and throughout her deposition she was found to be uncontrollably weeping. In the hospital P.W.3 and P.W.1 did not find any policeman from the local Manali Police Station till 6.30.p.m. and according to P.W.1 he had to go to police station to give a written complaint (Ex.P1) against A1 and A2 suspecting at that moment some foul play in the 'fire account'. All the three witnesses P.W.1 to P.W.3 as well as the victim's father were all present in the hospital throughout till the sad news of the demise of the victim happened at about 12.30 a.m. on 20.03.2008.

4.8. Thiru.Karpagamani (not examined), Sub Inspector of Police, Manali Police Station, received the written complaint (Ex.P1) from P.W.1 and registered FIR (Ex.P8) in Crime No.242/2008 against the accused (A1) and (A2) for the offences punishable under Sections 309 and 498(A) IPC.



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4.9. Thiru. Mohamed Kasif (P.W.14), Assistant Commissioner of Police, Ennore Range, took up investigation in Crime No.242/2008 on the same day at about 7 p.m., went to the scene of offence and prepared an Observation Mahazar (Ex.P9) and a rough sketch (Ex.P10) in the presence of the witnesses Dilli (P.W.4) and Thanikachalam (P.W.5). He also seized ten litres of kerosene can with seven litres of kerosene in it (M.O.1), one Match box (M.O.2) and Match sticks (M.O.3) from the scene of offence in the presence of the same witnesses under the cover of a mahazar (Ex.P11). Subsequently he received the death message of the victim at about 12.30 a.m. on 20.03.2008. He therefore altered the Sections of law to 498 A, 306 and 304 (B) IPC and sent the alteration report (Ex.P14) to the court. Since the victim had died within 7 years of her marriage, he requested the Revenue Divisional Officer to conduct Inquest and Enquiry. He also sent the body to the Mortuary of the Government Stanley Medical College Hospital, Chennai.

4.10. Thiru.Paulsingh (P.W.13), the Revenue Divisional Officer and P.A. to District Collector, conducted the inquest on the body of the deceased



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at the mortuary of the Stanley Medical College Hospital on 20.03.2008. He summoned the witnesses and enquired the parents of the victim and five panchayatdhars (who were present at the time of Inquest). He did not examine the victim's husband (A1) citing the reason that he was not produced by the police. He concluded that the victim died of dowry harassment and that both the accused have to be investigated seriously. His report was marked as Ex.P7 and it was sent to police on 27.03.2008.

4.11. Dr.Sathiyamurthy (P.W.12), Professor, Stanley Medical College Hospital conducted postmortem on the body of the deceased on 21.03.2008 at about 11.15 a.m. and recorded the following:

"Dermo Epidermal and deep burns on the face, neck, chest, abdomen, front and back of both the upperlimbs including both palms, front and back of both lower limbs including both the soles of feet, genitalia and on the back. No other External or internal injuries anywhere on the body.

Heart: Normal in size, cut section : Right side chambers



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contain fluid and clotted blood. Left chambers empty. Valves :

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Lungs: Normal in size. Cut Section: congested. Black soot particles adherent on the congested mucosal surface of larynx and Trachea.

Black soot particles adherent on the mucosal surface of Bronchi, Primary and secondary bronchiole. Stomach: 100 gms of thick green colour partly digested food particles with no definite smell. c/s Mucosa pale

Liver, Kidneys, Spleen: Normal in size C/S Congested

Genitalia: Hymen; Ruptured; tags of hymenal tissue adherent on to the vaginal orifice

Uterus: 6x4, 5x3.5 cm C/S Uterine cavity: Empty.

Endometrium: Congested. Both Ovaries; Normal in size, C/S. Normal

Pelvis & Spinal Coloumn: Intact

Brain : Normal in size, cut section: Normal"



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In the opinion of the doctor 'the deceased would appear to have died of extensive burns'. The postmortem certificate was marked as Ex.P6.

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4.12. Thiru Mohamed Kasif, the Investigation Officer (P.W.14) arrested the accused on 20.03.2008 and produced them before the concerned Magistrate for judicial custody.

4.13. The neighbours of the accused family, namely, Krishnan (P.W.6), Pattu (P.W.7), Kumari (P.W.8), Kannadasan (P.W.9) and Lakshmi (P.W.10) turned hostile to the prosecution.

4.14. Thiru. Jitendra (P.W.11), a distant relative and friend of the father of the victim went to Apollo Hospital on 19.03.2008 at 5 p.m. on receiving intimation from the father of the victim (since deceased). He has deposed that he was informed by the father of the victim that the victim was set to fire by the accused 1 and 2.



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4.15. After concluding the investigation, P.W.14 laid a final report before the Judicial Magistrate, Tiruvottriyur, in P.R.C. No.12/2008 against the accused for the offences punishable under Sections 498(A), 306 and 304(B) IPC.

4.16. The learned Judicial Magistrate, furnished copies of records to the accused under Section 207 Cr.P.C. and thereafter committed the case to the Principal Sessions Judge, Thiruvallur, who took the case on file in S.C.No.110/2011 and made over the same to IV Additional District and Sessions Judge. Ponneri. Subsequently the case was transferred to Fast Track Mahila Court, Tiruvallur, on the point of jurisdiction.

4.17. When the accused were questioned under Section 313(1)(b) Cr.P.C., they denied of having committed any offence. However, no oral/documentary evidence was adduced on their side.

4.18. The learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Tiruvallur, acquitted the accused vide his judgment



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dated 19.04.2018, aggrieved over which the present appeal is filed by the mother of the victim. The father of the victim died and therefore he was not examined in the trial court.

5. Mr.R. Vijayaraghavan, learned counsel for the appellant contended that the judgment of the trial court acquitting the two accused/respondents is not legally unsustainable since it was based on surmises. The trial court according to him, brushed aside the depositions of three prime witnesses P.W.1 to P.W.3 and instead harped on certain infirmities in the investigation process and even went to the extent of magnifying minor bonafide mistakes in their evidence. His further contention is that the judgment did not meet with the ends of justice and defeated the very purpose of enactment of special laws by the legislature intended to protect the women and punish those who commit crime against women. It is his contention that the father of the victim had approached the Judicial Magistrate, Thiruvottriyur, in Crl.M.P. No..4952/2008 alleging that the investigation was not done properly due to which the case was referred for further investigation and thereafter only the police examined the witnesses.



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6. Per contra, Mr. A. Sasidharan, learned Senior Counsel assisted by

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Mr.S.M. Nandhie Devan, learned counsel appearing for the accused 1 and 2 (respondents 2 and 3) highlighted the following deficiencies in the prosecution case and argued that neither the theory of alleged illicit intimacy between A1 and A2 nor the allegation of dowry harassment was established by the prosecution.

- i. There was no iota of evidence that the victim was subjected to any form of cruelty or harassment in the matrimonial home.
- ii. The version of P.W.1 that there was an alleged illicit affair between A1 and A2 was revealed to her by the victim only after 20 months of the marriage is not convincing.
- iii. None of the neighbours P.W.6 to P.W.10 came up with any knowledge of the alleged crime as all of them turned hostile.
- iv. The Revenue Divisional Officer neither conducted the Inquest nor recorded the statements of the witnesses individually and that the summons issued by the Revenue Divisional Officer was not produced before the court.
- v. There is a delay in sending FIR to court which is fatal to the case of



prosecution.

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vi. The correction regarding the name of the 2nd accused in the complaint (Ex.P1) given by P.W.1 was not authenticated by the defacto complainant (P.W.1).

vii.161(3) Cr.P.C. statement of the witnesses were sent to court after three months.

Therefore, it was contended that the order of acquittal passed by the trial court is perfectly in order and that every conviction should be backed by valid evidence and cannot be based on assumptions. His specific argument is that when two views are possible, the one which is favouring the accused should be taken into consideration and benefit of doubt should be given to the accused.

7. The final report contained three charges against the accused. They are Sections 498(A), 306 and 304(B) IPC.

Firstly, Section 498(A) IPC reads as "

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



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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.”

Secondly, Section 306 IPC reads as:

“If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

Thirdly, Section 304(B) IPC reads as:

“(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”



WEB COPY 8. Now these three Sections though independent have certain aspects

which overlap with each other. The vital aspects of the three sections are

- a) Unnatural death of a woman within seven years of marriage
- b) Harassment / torture of the married woman by husband or his relatives either for dowry or any other reasons.
- c) If death of suicide, whether abetment is there and
- d) Whether there was a demand for dowry which caused the death.

In the instant case, the unnatural death of the victim, who was just in her early twenties, occurred. PW-1, the elder brother, PW-2, the mother and PW-3, the younger brother of the victim have strongly suspected foul play in her death. The reason being the victim having confided to her mother (PW-2) of the illicit affair of her husband with his own sister-in-law (A2). Dilipkumar Choudry (PW.1) the defacto complainant and elder brother of the victim Supriya in his deposition has stated that his sister Supriya had seen the two accused in a compromising position and when she questioned her husband about this illicit relationship she was threatened to that extent that his father had to bring her back to his house on 06.12.2007 and that she



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was taken back by her father-in-law after a week or so on the assurance that no such thing will recur and that it involved the family's reputation. In fact her husband had come down to take her back after her father-in-law's assurance. PW-1 withstood the testimony of cross examination. It is pertinent to mention that even in his complaint he had mentioned that the reason behind her death was the illicit relationship between the two accused A1 and A2. The cross examination took place three years after the examination in chief and after nine years from the date of incident. A2 was the elder sister-in-law of A1. PW-2, the mother of the victim also corroborated the deposition of PW-1. However, she also did not specifically mention about any demand for dowry. She had only deposed that adequate 'Stridhana' was given at the time of marriage and after marriage also. She also withstood the testimony of cross examination, Vikaskumar (PW-3) the younger brother of the victim also corroborated the depositions of PW-1 & PW-2. One more startling fact which was revealed by him was that his sister was brought to Apollo Hospital, Tondiarpet, in an auto only after he had reached the hospital on getting information from his mother. He had also deposed that the police arrived at the hospital very late and that the father of



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A1 had stated to him that he had bought 8 litres of kerosene in a can. He withstood the testimony of cross examination. One more relevant aspect in his deposition was that he had questioned the accused as to why his sister was brought to the hospital in a share auto and also as to why they did not even attempt to save her, since there were no visible burn injuries on A1's hands who had brought the victim to the hospital. The response from the accused was an angry one. One more revelation in the deposition of PW-1 and PW-3 was that the father (who died in the year 2012) of the victim was not satisfied with the investigation by the police earlier and had sought relief from Tiruvotriyur Magistrate Court in Crl.M.P.No.4592/2008 due to which the case was reopened for further investigation. It was earlier reportedly closed for the reason that it is a suicide and then reopened after the filing of the above said petition.

9. With the contents of the depositions of the three prime prosecution witnesses one thing is clear that there was no demand for dowry from the accused or the family members. However, the RDO report (Ex.P-7) concluded that the death of Supriya was due to dowry demand. The peculiar



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feature in the report is the statement that "the deceased's husband (A1) was not examined because the police did not produce him". Such is the indifference of the RDO (PW-13). An unfortunate death is reported that too due to self immolation of the victim within seven years of marriage and the RDO treats it like an ordinary routine matter and with scant respect for the procedure. The charge under Section 304(B) fails miserably in the light of the deposition of PW-1 to PW-3 as there was no demand for dowry.

10. Now to the other two charges, one under Section 498(A) and another under Section 306 IPC. 'Cruelty' as for the purpose of the section means "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"

11. In the instant case, the young woman is dead. She succumbed to the burn injuries at 12.30 AM on 20.03.2008 in Apollo Hospital, Tondiarpet. The 'Accident/Injury police Inspection Report' (Ex.P13) written by Dr.Velavan contains the fact that it was Nirmal (A1) her husband who



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brought her to the hospital. The alleged cause is mentioned as "Alleged

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history of flame burns (quarrel between husband and wife) on 19.03.2008 at

02.30 PM at home. Patient herself poured kerosene on her body". This is the

first independent observation made by Dr.Velavan who might have got the

information from the patient. He has not been examined by the Investigation

Officer which smacks of insensitive investigation. His deposition would

have gone a long way to know the truth. But the deposition of PW-2 and

PW-3 that Supriya's body was fully burnt was confirmed in the postmortem

certificate dated 21.03.2008 (Ex.P6) issued by Dr.Sathiyamurthy (PW-12).

His opinion read as "the deceased would appear to have died of extensive

burns". Put together it is very clear that the victim died of suicide and that

she was under tremendous stress caused at her matrimonial home. It also

shows that there was no attempt to save her by anyone in the house where

the incident happened. Had there been an attempt, visible burn injuries on

the hands of A1 or any other family member would have been there. It is

also not disputed that her death occurred within seven years of her marriage.

Her marriage took place in 2006 and the death in 2008.



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12. Before going into the aspect of abetment, let us go into the contention of the accused that in Jain Community joint family system prevails and that the love and affection shown by wives of elder brothers is a motherly one and it was misconstrued by the victim. This in itself is a tacit acceptance that there was something amiss between the two accused. The victim also belonged to the the same community and trying to paint a picture as if she wanted to break away from the joint family is not acceptable and therefore, immolated herself is also not acceptable. In my opinion, a woman has a 'seventh sense' to know anything unusual especially in the husband's behaviour. She has also complained on that and confronted him. Illicit relationship between A1 & A2 as deposed by PW-1 to PW-3 has to be believed because, it is purely an internal family matter and the victim or her kith and kin had no reason to invent it. Finding A1 & A2 locked in a room definitely does not indicate motherly affection between A1 and his sister-in-law. I have every reason to believe this version. The trial court has concluded that allegation of illicit relationship with other woman would be illegal and immoral but would not amount to cruelty in itself gives a perverse meaning. The instant case is that of a illicit relationship of sister-



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in-law (A2) with her brother-in-law (A1) and how that will not be cruelty or harassment to the victim is beyond comprehension. In fact, the defence counsel for the accused in the trial court had contended that the deceased was hyper sensitive and could not differentiate between good and bad in normal life. Such assumptions have been accepted by the trial court. If the husband is immoral and his activities are outside his house, the effect on the wife is lesser as it can happen clandestinely but in the instant case it has happened inside the home and under the pretext of 'motherly affection' and she has seen it. The word cruelty in Section 498(A) can manifest itself into multiple offensive forms including indulgence in 'extramarital relationship'. The word 'cruelty' has been deliberately kept open ended in order to accomodate any new development of what may amount to cruelty in our understanding. The trial court in my opinion has definitely erred on it. Section 498(A) is definitely proved by the depositions of PW-1 to PW-3. It is not only because of the allegations against both A1 & A2 but also emanating from the fact that why A2 has to be implicated when A1 is the husband and his 'cruelty' was due to the victim's unreasonable demand to live as a nuclear family and not due to any extramarital affair.



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WEB COPY 13. Now to the other charge under Section 306

Section 306 talks about the abetment of suicide. The essentials for invoking Section 306 IPC are

- a) Suicide is must
- b) Active assistance and participation
- c) Direct nexus or implied nexus
- d) Abetment to be judged in the context of the entire evidence

Also for the presumption of abetment of suicide of a married woman under Section 113(A) of the Indian Evidence Act, the following conditions have to be fulfilled.

- a) that suicide has been committed by the woman
- b) that the suicide is within seven years of the marriage
- c) that she has been subjected to cruelty by her husband or any other relative within the meaning of cruelty in Section 498(A) IPC
- d) that there should be allegation on her husband or any other relative that there was instigation.

Abetment of suicide involves a mental process of instigating a person or



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intentionally aiding a person to commit suicide. Without a positive act on

the part of the accused to instigate or aid in committing suicide, conviction

cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Apex Court are clear that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit the offence. The trial court concluded that there was no mens rea proved in this case by the prosecution.

14. There cannot be any straight jacket formula to find whether in any case there has been instigation which forced the deceased victim to such a position that she committed suicide. Where there is no direct evidence, inference has to be drawn from the circumstances and whether the circumstances created a situation which forced the victim to commit suicide. It has also been held by the Apex Court time and again that the presumption is not mandatory and that the court has to have regard to "all the other circumstances of the case" and also that the presumption is not an irrebuttable one.



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15. In the instant case, the trial court held that the prosecution has failed to prove that it was the direct and active act by the accused that drove the victim to commit suicide. It was also held by the trial court that the prosecution witnesses did not spell out in unequivocal terms that the accused was responsible for the suicide by way of adducing any cogent evidence. This interpretation is also erroneous.

16. When harassment and cruelty is meted out to a woman within the four walls of the matrimonial home, it is difficult to get independent witnesses to depose about it. Only the inmates of the house and the relatives of the husband witnessed it. Their servants being obligated may never depose against them. And, neighbours are always 'slippery witnesses' who have a tendency to stay away from court. Thus in such 'bride burning' cases only the parents and her relatives depose about the misery of the deceased woman. If their depositions are also brushed aside, there is no way to go into the truth of the matter. According to me, the deposition of PW-1 to PW-3 are strong and have not been countered by the accused. On the flip side, it is unfortunate that the police did not take the matter seriously. A



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young woman is fully burnt and lying in the hospital struggling for life. The police is not visible there. No dying declaration was also attempted to be taken. The investigating agency ought to have displayed greater sensitivity. In my opinion whatever be the intensity of inaction by the investigating officials, the court has a bigger responsibility of sifting through the various available evidence and separating grain from chaff thereby rendering justice and not merely relying on technicalities and trying to find the escape route thereby indirectly facilitating the culprit. If such soft approach resorted to by the courts then the very purpose of Section 498(A), 304(B) IPC would be defeated that too in a society riddled with inequalities and male chauvinism. The settled law is that the accused cannot take advantage of poor investigation.

17. As already discussed the police for extraneous reasons had deliberately done a poor investigation being totally insensitive to the fact that the victim was a young woman married very recently. Even the nature of injuries and the resultant death did not evoke any response to do their duties with conscience and honesty. Had it been a girl in their own family



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such an apathy would not have been exhibited by them. The time of arrival of the Manali Police in the Hospital, absence of any conscious efforts to have a dying declaration, lethargy in sending the FIR to the concerned Magistrate Court are all indications of a rot in the system. The Revenue Divisional Officer also has not bothered to perform his assigned duty properly and instead tried to shift the blame on the police officials and made a mockery of the system of RDO enquiry in the case of suspicious death of a married woman within seven years of marriage as envisaged in the stringent provisions of Section 304(B) IPC or any such crime against women resulting in death. But in this fully enacted drama the role of the trial court in taking the easy route of filling the judgment with plethora of High Court rulings without exploring the judicial possibility of rendering justice to the victim is very unfortunate. No two criminal cases can exactly have identical facts and circumstances to totally rely on earlier decisions of higher courts.

18. The most important aspect in the deposition of P.W.2 the mother of the victim is the moments which she had spent with the victim in the



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Hospital. She has deposed that she along with her husband were allowed to go and meet the victim and as a mother she had a few questions to which the victim had answered by way of nodding her head. The first of such question was whether she was immolated by the accused to which her reply was in the affirmative by way of nodding her head. Secondly she was questioned as to whether anyone came to her rescue to which she nodded her head as no. The third question was that whether she was willing to go back to her matrimonial home after full recovery for which her answer was in the negative and lastly as to whether she was willing to come back to her parents to which she said 'yes' by way of nodding her head. This portion of the deposition is not only heart wrenching but also not rebutted in any manner by the accused. The trial court had also observed while recording the evidence of P.W.2 that she was very emotional and in tears during the most part of the deposition and it only shows the truthfulness in her statement.

19. Despite this the trial court has adopted a 'soft justice' approach. In fact, much reliance has been placed on an unauthenticated correction in the



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complaint given by PW-1. The name of the second accused A2 was written wrongly and corrected. The name is correctly mentioned in the FIR which means it was a bonafide correction. During the course of cross examination, it was suggested by the defence counsel that the victim had tried to threaten A1 by pouring kerosene on herself and that this turned into a disaster. The nature of burn injuries as certified by the Doctor who did the postmortem clearly shows that the theory of the defence was only a figment of imagination.

20. It was argued that the delay in registering FIR and also forwarding it to the concerned Magistrate was not explained satisfactorily by the police. Similarly, the inordinate delay of 18 months in recording the statement of the witnesses under Section 161 Cr.P.C. and the submission of the RDO report after two weeks and recording of the statement of PW-2 by the RDO in tamil when she does not know tamil are all deficiencies pointed out by the defence to claim that these infirmities had weakened the case. It was also pointed out that the statement of panchayatdhars as a single statement and the non attachment of summons with his report by the RDO



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are all fatal to the case of the prosecution. These were all accepted by the trial court. The RDO report making the dowry demand as the main cause for the suicide added to the woes of the prosecution. It is clear that manipulation of the prosecution case by the police by not examining crucial witnesses like Dr.Velavan and the RDO not examining the husband (A1) of the victim have caused some damage to the case of the prosecution.

21.Nevertheless, on the side of the prosecution, the three witnesses PW-1 to PW-3 compensated for these lacunae. The victim who was convinced by her father in law to return to her matrimonial home in December 2007, had called up her mother on 14.02.2008 and stated that she is being ostracized in her matrimonial home with no one speaking to her and she not being allowed to speak to her parents. The call was abruptly cut. Thus it is seen that she was cornered. This was followed by the incident of suicide which was informed by Kamalesh, the elder brother of A1 and the husband of A2. So it is not that the A1 had mended his ways. In fact, he continued with his relationship which is established by the statement of PW1 to PW3. There is no reason to disbelieve the versions of PW.2



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especially when she had withstood the testimony of cross examination.

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22. The defence had pointed out the inordinate delay in sending the FIR to court and in recording the statements under Section 161 of Cr.pc of the witnesses. However, the cross examination allowed by the trial court after the lapse of considerable period of three years is more dampening. The incident took place in 2008, the examination in chief in 2014, the cross examination in 2017-18 and the judgment in 2018. The trial court by showing excessive devotion to the rule of benefit of doubt nurtured unwarranted doubts and suspicion and made the justice delivery system futile. Reasonableness of doubt must be commensurate with the nature of offence to be investigated. This is not a case where two views are reasonably possible. But the trial court without mentioning what are the two possible views, held that the charge was not proved against the accused. It is the case of the prosecution witnesses that the victim had exposed her major grievance of her husband's infidelity that too with his own sister-in-law (A2). The shocking expose of the happenings in her matrimonial home had definitely put her under tremendous stress and harassment by the



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accused. It is not that they were alone. It was a joint family and only the victim had the courage to question it. That she was under constant threat and pressure can be understood. It is not the case of the defence that the victim suffered from any mental illness. It was also not the case of the defence that she was rushed to the hospital immediately. The incident as per the accident report of the hospital took place at 2.30 P.M but she was taken to the hospital only at 3.40 P.M. She was brought to the hospital in a share auto even though the family owned a car. The deposition of PW.3 reveals that the father-in-law of the victim had stated that he bought 8 litres of kerosene out of which 7 litres were seized. The can of kerosene was found in a corner of the room. The severe burn injuries would have made the victim scream loudly. In a house having two more housewives and a shop attached to it manned by Kamalesh, elder brother of A1, no one came to her rescue shows their apathy.

23.The prosecution witnesses PW.1 to PW.3 have withstood the testimony of cross examination very well. Therefore, I have every reason to



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believe that the victim was harassed and mentally tortured by the accused.

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She had to be a witness to such an act of adultery by her own husband that too with close relative (A2) and was beaten up for confronting her husband. Everyone else in the family had tuned a deaf ear thereby becoming mute witnesses.

24.The Apex Court had given some indications in dealing with such cases involving crime against women. One such indication was that such cases ought to be dealt with in a more realistic manner and criminals should not be allowed to escape on account of procedural technicalities or insignificant lacunae in the evidence and the courts are expected to be sensitive. It also emphasized the need for the criminal justice system to equally respond to the needs and notions of the society. As regards the word cruelty, it was held that every instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave that it may have lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, the trial court's conclusion that 'illicit relationship' is



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only immoral and that it cannot be construed as cruelty is not acceptable by any standard. Section 306 and 498(A) IPC are held proved in the instant case. The accused are guilty of the offences as they have not even attempted to rebut the presumption under Section 113A of the Indian Evidence Act.

25. For the reasons aforesaid, I set aside the judgment and order of acquittal dated 19.04.2018 made in S.C.No.110/2011 on the file of the Magalir Neethimandaram, (Fast Track Mahila Court), Tiruvallur.

25.1. The appeal is partly allowed and the accused, namely, Nirmal (A1) and Tara (A2) are convicted for the offences punishable under Sections 498(A) and 306 IPC. However, the accused are acquitted for the offence punishable under Section 304(B) IPC.

25.2. The respondent police is directed to produce the accused before this court today by 2.15 p.m for questioning them with regard to the



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sentence to be imposed upon them.

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25.09.2023

Mr. Sugendran, learned Additional Public Prosecutor informed this Court that both the accused are now in Mumbai and a special team has been formed to nab the accused and requested this Court to post the matter on 27.09.2023. At his request, adjourned to 27.09.2023 for further proceedings as stated above.

Index : yes/no
Speaking /Non speaking Order
bga



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1. The Sessions Judge, Magalir Neethimandaram,
(Fast Track Mahila Court), Tiruvallur.
2. 1.The Inspector of Police,
M-6, Manali Police Station,
Chennai.
(Crime No.242/2008).
3. The Additional 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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