



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JULY, 2024

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BEFORE

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

CRIMINAL APPEAL NO. 445 OF 2014 (C)

BETWEEN:

1. SRI. B.S. JANARDHANA
S/O SEENAPPA POOJARI
AGED ABOUT 42 YEARS
2. SMT. B.S. UMAVATHI
W/O SEENAPPA POOJARI
AGED ABOUT 63 YEARS

BOTH ARE RESIDENTS OF
KANTHUR MURNAD VILLAGE
MADIKERI TALUK-571 201
KODAGU DISTRICT

...APPELLANTS

(BY SRI. MADHUKESHWARA, ADVOCATE FOR
SRI. SACHIN B.S., ADVOCATE)

AND:

THE STATE OF KARNATAKA
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BANGALORE-560 001

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP)

THIS CRL.A. IS FILED U/S.374(2) OF CR.P.C PRAYING TO
SET ASIDE THE JUDGMENT AND ORDER DATED 16.4.2014
PASSED BY THE PRL. S.J., KODAGU, MADIKERI IN
S.C.NO.8/2002 - CONVICTING THE APPELLANTS/ACCUSED FOR
THE OFFENCE P/U/S 498A AND 306 R/W 34 OF IPC.THE
APPELLANT/ACCUSED NO.1 IS SENTENCED TO UNDERGO R.I.





FOR 7 YEARS AND PAY FINE OF RS.1,000/-, IN DEFAULT TO PAY FINE, HE SHALL UNDERGO R.I. FOR 6 MONTHS FOR THE OFFENCE P/U/S 306 R/W 34 OF IPC.

THIS APPEAL, COMING ON FOR ARGUMENTS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The appellants being aggrieved by the judgment of their conviction and order of sentence passed in Sessions Case No.8/2002 dated 16.4.2014 have preferred this appeal.

2. The parties to this appeal are referred as per their rank before the trial Court.

Proceedings before the trial Court:

3. That the appellants-accused Nos.1 and 2 were charge sheeted by the Sub-Inspector of Police, Madikeri Police Station for the offences punishable under Section 498(A) and Section 306 read with Section 34 of IPC on the ground, that deceased Saraswathi was the wife of accused no.1 and daughter-in-law of accused no.2. The deceased along with accused nos. 1 and 2 were residing at Murnad Village which is about 15 kms. away from Illamonangeri



Village i.e. native place of deceased Saraswathi (her parents house). In the marital life with accused no.1, deceased delivered a male child. Thereafter, relationship between deceased and accused were strained. They started quarrelling with each other. It is alleged that, accused no.1 used to suspect her fidelity and character and used to harass her both physically and mentally. It is stated that, in this regard, Panchayaths were conducted and there was a compromise. It is alleged that, even then, the accused did not mend their ways and started harassing the deceased mentally and physically.

4. It is specifically alleged by the complainant that, having not tolerated the harassment done by the accused persons, on 4.8.1998, deceased Saraswathi consumed poison in the early morning hours. She was initially taken to District Hospital, Madikeri. Thereafter, she was taken to Wenlock Hospital, Mangaluru. When she was in District Hospital, Madikeri she gave her statement as per Ex.P9 and based upon that, the crime was registered



in Crime No.168/98 of Madikeri Rural Police Station and the criminal law was set in motion. When she was shifted to Wenlock hospital, Manguluru and under treatment she died on 6.8.1998. On the same day itself, the PM on the dead body was conducted by PW.9 Dr.Nalini Pai of Wenlock Hospital. It was the opinion of the FSL that because of consuming poison, she died. The investigation officer, after completion of the investigation, filed the charge sheet against the accused for the aforesaid offences.

5. During the course of trial, accused were granted bail. Even now also they are on bail. The learned trial Court framed the charges against the accused for the aforesaid offences for which, they pleaded not guilty.

6. To substantiate the case of the prosecution, in all, prosecution examined 10 witnesses and got marked Ex.P1 to P12 and closed its evidence. None of the documents are marked on behalf of the defence. No material objects were marked.



7. The learned trial Court, after closure of the evidence and on hearing the arguments, on evaluation of the evidence placed on record, found both the accused guilty of committing the aforesaid offences and sentenced them as under:

(i). Accused No.1/ Janardhana is sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000-00 [Rupees one thousand only] for the offence under Section 306 read with Section 34 1.P.C., and in default of payment of fine he is ordered to undergo rigorous imprisonment for six months.

(ii) Accused No.2 being a lady, is sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000-00 [Rupees one thousand only] for the offence under Section 306 read with Section 34 I.P.C., and in default of payment of fine she is ordered to undergo rigorous imprisonment for six months.



(iii) Both the accused are sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000-00 [Rupees one thousand only] each for the offence under Section 498A read with Section 34 I.P.C., and in default of payment of fine they are ordered to undergo rigorous imprisonment for three months.

8. Now, the appellants-accused nos. 1 and 2 are before this Court challenging their conviction and sentence.

Proceedings before this Court:

9. The learned Sri Madhukeshwara, Advocate appearing for the appellants with all vehemence submits that, the impugned judgment is not at all sustainable either on law or on facts. He submits that, when the offences are alleged under Section 498-A, 306 of IPC, the ingredients of the said offences shall have to be proved in accordance with law. The crime was registered based upon the statement of the deceased Saraswathi recorded by the



Police when she was in the hospital. The doctor has not certified about her physical, mental and medical capacity to give statement. Based upon that, a false complaint is registered. In fact, according to him, this Ex.P9 is not a genuine document. There was no harassment or ill treatment by both the accused as per the evidence placed by the prosecution. He submits that, as per the case of the prosecution, on the previous night of admitting the deceased to the Hospital, there was a quarrel. But, she has consumed poison on the following day in the early hours. In the intermediate period, what all was transpired is not explained by the prosecution. Nothing has happened as alleged by the prosecution. What made the victim to commit suicide is not stated in Ex.P9. To prove the offences of the aforesaid nature, it is the duty of the prosecution to prove the initial *mens rea* which is very much essential. The whole genesis of the case of the prosecution as alleged by the prosecution is not duly proved in accordance with law. The witnesses have not supported the case of the prosecution in material



particulars. According to his submission, the learned trial Court has committed a grave error in finding the accused guilty. In support of his submission, he relied upon the various evidence spoken to by the witnesses as well as the findings of the trial Court and submits that, there is no proper evaluation and assessment of the evidence placed on record by the prosecution. Therefore, he prays to allow the appeal and set aside the impugned judgment.

10. Refuting this submission, the learned HCGP submits that, the trial Court has rightly convicted the accused and hence, no interference is required into the impugned judgment. The witnesses so examined in this case especially of PW.5, the sister of the deceased has come before the trial Court and stated about the mental, physical harassment to the married woman i.e. Saraswati his sister by the accused. Ex.P9 (Statement of accused) is a genuine document and no fault can be found with the genuineness of the said document in the absence of acceptable cross-examination directed to PW.8, the Police



Officer who has recorded the statement as per Ex.P9. In support of his submission, he too relies upon the evidence placed on record by the prosecution and findings of the trial Court, he prays to dismiss the appeal.

11. I have given my anxious consideration to the arguments on both the sides. Meticulously perused the record. In view of the rival submissions of both the sides, the following points arise for my consideration:

1. *Whether the prosecution proves the suicidal death of deceased Saraswathi by consuming poison?*
2. *Whether the judgment of conviction and order of sentence passed by the trial Court suffers from infirmity, illegality, without appreciation of evidence in a proper manner and hence, require interference by this Court?*



ANALYSIS:

12. So far as relationship between deceased Saraswathi and accused no.1 is concerned, they are wife and husband. Deceased Saraswathi was the daughter of PW.4 Babu Channappa Poojary and Kamala i.e. PW.6. Marriage of deceased Saraswathi with accused no.1 was performed about 10 years back prior to PW.6 gave evidence before the trial Court.

13. It is the case of the prosecution as per the complaint/dying declaration i.e. Ex.P9 that, in the wedlock between accused no.1 and deceased, a male child is born. After marriage, both accused no.1 and deceased used to reside together along with her mother-in-law accused no.2. They lead a happy married life for about one year. It is stated that, thereafter, accused no.1 started suspecting the fidelity of deceased Saraswathi and started harassment both physically and mentally. It is alleged that, on 3.8.1998, after dinner, there was a quarrel between accused no.1 & 2 and deceased and at that time,



accused no.1 abused her in filthy language and told that she is having her paramours. Because of the persistent harassment by accused nos. 1 and 2 continuously, at 5.30 a.m. on 4.8.1998, she consumed pesticide used for coffee plantation. She was shifted to District Hospital, Madikeri and there she gave a statement about consumption of poison by her. She was shifted to Wenlock Hospital and there she died.

14. After her death, the inquest panchanama was conducted as per Ex.P1 by the IO in the presence of Panchas noting about the consumption of poison by her. After conducting the inquest panchanama, the dead body was sent for post mortem. The doctor on duty conducted the post mortem and prepared the report as per Ex.P11. To prove the said fact, prosecution relies upon evidence of PW.1 the inquest pancha but, he has been turned hostile. So also, PW.4 Babu Channappa Poojary the father of the deceased, PW.5 Meenakshi, sister of the deceased, PW.6 Kamala mother of the deceased, PW.7 Murthy Prasad a



neighbour of father of the deceased. PW.8 H.C.Sannayya who recorded statement of deceased as per Ex.P8, PW.9 Dr.Nalini Pai who conducted the post mortem, and the IOs evidence. On reading the evidence of all these witnesses coupled with inquest report as well as post mortem report, it shows that deceased Saraswathi died because of consuming poison named as Organophosphorous as noted in the PM report.

15. The fact of consuming the said poison is noticed at the time of conducting the post mortem and even the FSL report sent to the Laboratory corroborates the said fact. The defence also do not deny about the death of deceased by consuming the said poison. Therefore, on cumulative reading of the aforesaid discussed evidence, it is proved by the prosecution, that deceased Saraswathi died because of consuming the poison. Therefore, point no.1 raised supra is answered in the affirmative.



16. It is the specific assertion of the prosecution that, accused no.1 being husband and accused no.2 being the mother-in-law of the deceased after one year of the marriage with accused no.1, started ill treatment and torture on deceased Saraswathi. It is stated that unnecessarily, the accused started doubting her fidelity. She went to her parental house and thereafter her father brought her back two days prior to the date of incident. It is alleged, that on the previous night of the incident there was a quarrel after dinner. At that time, accused no.1 abused her stating that she is having paramours. It is further case of the prosecution that, because of continuous harassment by both the accused at 5.30 a.m. on 4.8.1998 she consumed pesticide used for coffee plantation which she has brought about one week back. Subsequently she died because of consuming the said poison. In view of the allegations made in her statement Ex.P8, the criminal law was set in motion and accused nos.1 and 2 were charge-sheeted for the offences punishable under Section 498A and 306 of IPC.



17. To prove the said offences, prosecution relies upon the various evidence spoken to by the witnesses amongst them, PW.2 Poovappa has given statement as per Ex.P2 prepared by the Police. He states that, he does not know why Saraswathi committed suicide. He does not know the contents of Ex.P2. Likewise, PW.3 Ashoka Subramani has given a statement as per Ex.P3. He states that Saraswathi died at Wenlock Hospital, Mangaluru. Police took his signature at Murnal. Both these witnesses turned hostile but, nothing worth is elicited from their mouth. To the extent of they giving statement before the police, their evidence is to be accepted. But, both do not know the contents of their statement. Therefore, their evidence would not help the case of the prosecution.

18. PW.4 Babu Channappa Poojary, PW.5 Meenakshi, PW.6 Kamala are the close relatives of the deceased as stated above. As per the statement Ex.P8, about one week prior to the incident, deceased went to her parent's house. but, PW4 statement shows, she visited



his house 4 months prior to death. This evidence of all these witnesses being the close relatives of deceased show that, there was no harassment or ill treatment by the accused persons on the deceased. It has come in the evidence of PW.4 that, deceased Saraswathi never revealed about the same to him. He just speaks about consuming of pesticide. PW.5 states that accused used to look after her sister cordially. So also, PW.6 speaks in similar terms. The learned Public Prosecutor declared them as hostile witnesses but, nothing worth is elicited so as to disbelieve their version spoken in their examination in chief.

19. PW.7 Murthy Prasad is a neighbour and he speaks about consumption of poison by deceased Saraswathi and shifting her to Madikeri Hospital. He came to know about death of deceased and he put his signature on Ex.P7. He never speaks about ill-treatment or harassment by the accused. He states in his examination



in chief that, accused was looking after Saraswathi cordially.

20. PW.8 H.C.Sannaiah, HC attached to Madikeri PS at the relevant time, as per the information received by the SHO of the said Police Station, he went to District Hospital, Madikeri and noticed that, deceased Saraswathi was taking treatment and she was in Emergency ward. One staff nurse showed Sarswathi and she was conscious and talking. Accordingly, he recorded the statement of Saraswathi as per Ex.P9 and handed over the same to the SHO. This Ex.P9 was the basis for setting the criminal law in motion and based on that, a complaint was registered.

21. On reading the evidence of PW.8, he never says that, he met the doctor at District Hospital, Madikeri, took his opinion regarding physical, mental and medical capacity of the deceased to give statement. When she has consumed poison and was taking treatment at Emergency ward, this PW.8 ought to have got the certificate from the



treating doctor about her competency to give a statement. In categorical terms, he states that, he did not obtain a certificate from the doctor regarding the mental condition of the patient to give statement. He also states that he has not recorded the statement in the presence of the doctor. Even he has not mentioned the time of recording the statement. He has not obtained the signature of the doctor on Ex.P9. Even he cannot say that why Saraswathi did not sign the Ex.P9. He denied other suggestions.

22. This Ex.P9 is the main document pressed into service by the prosecution to prove the harassment and ill treatment by the accused persons and also abetment to commit suicide by the deceased. But, there is no acceptable evidence brought on record by the prosecution to prove the said fact with legal evidence.

23. PW.10 Vinod Kumar, is the brother of deceased and has come before the trial Court and states that when he visited the house of the accused, she used to complain



about accused no.2 telling that, whatever the work she does in the house, accused no.2 was not satisfied. He states that deceased never complained against accused no.1. Deceased visited his house about two months prior to her death. He speaks with regard to the death of deceased by consuming poison. He too has been declared hostile but, nothing worth is elicited from his mouth. The IO in this case is not examined by the prosecution.

24. When offences under Section 498A and 306 of IPC are attributed against the accused persons, it is bounden duty of the prosecution to prove the ingredients of the said offences.

25. On perusal of Sec.498A of IPC, it would show that cruelty would mean any willful conduct which was of such a nature as was likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical to the woman.



26. Here in this case, except the bald statement in Ex.P9, there is no evidence about cruelty and harassment alleged to have been given to the deceased. It is settled principle of law that, mere quarrels between husband and wife do not amount to cruelty and harassment attracting the provisions of Sec.498A of IPC. The prosecution is under obligation to prove the ingredients of said offence to see that, there is a real cruelty on a married woman by her husband and in-laws. The harassment need not be in the form of a physical assault and even mental harassment also would come within the purview of Sec.498A of IPC. The evidence so placed on record by the prosecution that is of parents of deceased, her brother and sister, as discussed above, would prove in clear terms that accused no.1 looked after the deceased cordially. Even her brother states, accused no.2 was dissatisfied by the work done by the deceased. Accused no.1 never ill treated her. Therefore, there is no reason to discard the evidence of these witnesses who are the material witnesses to understand the acts and behaviour of appellant-accused.



Though suicidal death is established by prosecution but, there is no evidence to prove that really there was a harassment, ill treatment by these accused persons on the deceased. Even there is no abetment to commit suicide as alleged by the prosecution because, as rightly submitted by the counsel for the appellant-accused, suicide is a process wherein a person gets dejected over his/her life and decides to bid adieu to the planet. A person who commits suicide becomes victim of circumstances, leading to only alternative of taking the extreme step. It is the mental attitude that a person decides to die. It is an instigation to commit suicide when the mental state is inducted by others, in which event, they would be committing instigation to commit suicide.

27. A co-ordinate Bench of this Court in ***Gangadhar and another vs. State of Karnataka*** reported in ***(2018) 5 KLJ 173*** has held that "reasons for instigation to commit suicide, cannot be judged exclusively from the point of the person who commits suicide or the



person against whom instigation is alleged, the accused in present case. For a person who instigates, may be, unmindful of his act and impossible impact on the person and chances of the later taking extreme step. An independent assessment only would establish whether that act of accused really instigated victim to commit suicide."

28. In the instant case, no such words were used by the accused or the act of the accused towards the victim to commit suicide. It was a usual quarrel between the husband and wife. In such offences, *mens rea* active or direct act leading deceased to commit suicide are essential for invoking the provisions of Section 306 of IPC. As discussed above, abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, the law is that, conviction cannot sustained.



29. Therefore, in order to convict a person under Section 306 of IPC, there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which lead the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he or she committed suicide.

30. In this case, the accused being a coolie person was alleged to have harassed his wife leveling allegations against her doubting her chastity. But, this fact is falsified by the evidence of the witnesses of parents, brother and sister of deceased. In such premise, the trial Court should not have accepted the evidence of prosecution witnesses to be trustworthy in coming to the conclusions that appellants/accused meted deceased with cruelty, thereby committed the offence under Sec.498A and 306 read with Section 34 of IPC. So, on re-appraisal of the evidence on record, this Court is of the view that, there being no credible evidence on record in this case to



come to a finding that, the appellants meted the deceased Saraswathi with cruelty. Hence, the impugned judgment of conviction recorded by the trial Court is unsustainable in the eye of law. Thus, the judgment of the trial Court as rightly submitted by the counsel for the appellant can be termed as perverse and it suffers from illegality and infirmity, consequentially, leading to flagrant miscarriage of justice warranting an interference by this Court. Accordingly, Point No.2 raised supra is answered in favour of the appellant-accused and against the prosecution.

Resultantly, I pass the following:

ORDER

- (i) Criminal Appeal stands allowed.
- (ii) The impugned judgment of conviction and order of sentence dated 16.04.2014 passed by the Prl.Sessions Judge, Kodagu at Madikeri against the appellant-accused, is set aside.



- (iii) Consequentially, the appellants-accused are acquitted of the charges under Section 498-A, 306 read with Section 34 of IPC.
- (iv) The bail bonds furnished by the accused-appellants stand cancelled.
- (v) Send back the trail Court records along with copy of this judgment.

**Sd/-
JUDGE**

Sk/-
List No.: 1 Sl No.: 3