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Jose vs State of Kerala

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Court : Kerala

Decided On : Feb-01-2024

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : CRL.A/2759/2008

Appellant : JOSE

Respondent : State of Kerala

Judgement :

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945 CRL.APPEAL NO. 2759 OF 2008 AGAINST THE JUDGMENT DATED 21.11.2008 IN SC 573/2006 OF ADDITIONAL SESSIONS COURT (FAST TRACK COURT NO.II-ADHOC), THRISSUR APPELLANT/ACCUSED:

JOSE S/O LONAPPAN,POZHOLIPARAMBIL (H),THOMMANA, KADUPPASSERI, MUKUNDAPURAM. BY ADVS. SRI.C.HARIKUMAR SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENT/COMPLAINANT/STATE: STATE OF KERALA REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA. SMT.PUSHPALATHA M.K., SR.PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 17.01.2024, THE COURT ON 01.02.2024 DELIVERED THE FOLLOWING: P.G. AJITHKUMAR, J. C.R.

---------- Dated this the 1st day of February, 2024

JUDGMENT

The appellant was the accused in S.C.No.573 of 2006 of

the Sessions Court, Thrissur. The Additional Sessions Judge (Fast Track Court No.II-Adhoc), Thrissur convicted him of the offences punishable under Sections 498A and 306 of the Indian Penal Code, 1860 (IPC). He was sentenced to undergo simple imprisonment for a period of three years and to pay a fine of Rs.2,000/- for offence under Section 498A of the IPC and for a period of five years and to pay a fine of Rs.10,000/- for the offence under Section 306 of the IPC. The said

judgment of conviction and the order of sentence are under

challenge in this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (Code).

2. The case of the prosecution was as follows: The appellant married Smt.Jaya on 31.12.2000. They have two children. The appellant used to mentally and physically

harass Smt.Jaya. On 01.05.2003 the appellant caught hold of and slapped Smt.Jaya in public at Peringottukara Centre. One week before the marriage of her brother, Smt.Jaya went to her parental home in connection with purchase of gold ornaments. While the appellant was taking her back to his home, he slapped her at that house in the presence of others. On a day in May 2004, the appellant

pushed Smt.Jaya down from the scooter. On 09.02.2006 at about 4.30 p.m., direction of the appellant to bring to him a drilling machine was not heeded in time and therefore he had assaulted Smt.Jaya saying, why could not she die herself. Smt.Jaya, unbearable with such mental and physical harassment, at about 7.30 p.m. on that day, after pouring kerosene set ablaze her body inside their house. She succumbed to the injuries at 6.50 a.m. on 13.02.2006.

3. The appellant was tried on a charge for the offence

under Sections 498A and 306 of the IPC. PWs.1 to 17 were examined and Exts.P1 to P20 were marked. MOs.1 to 3 were identified. The appellant denied the evidence against him and

stated during examination under Section 313(1)(b) of the Code that he never harassed or assaulted his wife; whereas she had a suicidal tendency, which he had conveyed to her parents several occasions. On the fateful day, he did not do the alleged acts and it was he who tried to rescue Smt.Jaya. He also sustained burn injuries. Thus, he maintained that he was innocent. No defence evidence was let in.

4. The trial court, after appreciating the evidence,

held that the evidence tendered by the prosecution proved the

charges beyond doubt and accordingly convicted the appellant. The appellant assails the said conviction and consequent sentence on many grounds.

5. Heard the learned counsel for the appellant and the learned Public Prosecutor.

6. The prosecution placed reliance to prove the

commission of the acts forming the foundation for the charge on the oral testimonies of PWs.1, 3, 4, 11 and 15. The prosecution seeks assistance of Ext.P8 F.I.statement and Ext.P13 dying declaration also in that regard. PW1 is the brother, PW3 the mother and PW4 the sister of the deceased. They have stated about all the four incidents of the alleged assault and harassment of the deceased

by the appellant.

7. On 01.05.2003, the deceased was slapped by the

appellant at the public road near Peringottukara Centre for the reason that a ring of their child was lost due to her negligence. The marriage of PW1 was scheduled to be held on 23.11.2003. One week before Smt.Jaya went to her parental home for the purchase of gold ornaments. In the evening, the appellant reached that home to take Smt.Jaya back. They further deposed that in the presence of others, Smt.Jaya was slapped at that house by the appellant. Again, Smt.Jaya was allegedly pushed down from the scooter on a day in May, 2004 on their way back from the house of his brother. The second incident occurred in the presence of PWs.3 and 4. However, all those witnesses knew about the other incidents only as told by Smt.Jaya.

8. What the said witnesses stated regarding the incident took place on 09.02.2006 also is based on the

information passed on to them by the deceased. She was immediately taken to the hospital with burn injuries. When the said witnesses reached the hospital, they were told by Smt.Jaya of the incident. The appellant stated during examination under Section 313 of the Code that such an incident occurred and it was he who brought down fire and in that course he also sustained burn injuries. Thus the fact that Smt.Jaya sustained burn injuries when she attempted to set ablaze her body after pouring kerosene at her house is not disputed.

9. The appellant married Smt.Jaya on 31.12.2000 and they were residing as husband and wife ever thereafter.

Following the incident on 09.02.2006, Smt.Jaya was undergoing treatment and while so she succumbed to the burn injuries. PW12, who held the autopsy, deposed in court substantiating that fact. Ext.P9 is his report. Smt.Jaya died due to the burn injuries she sustained on 09.02.2006 is thus indisputable. Therefore, the question is whether Smt.Jaya was subjected to cruelty as defined in Section 498A of the IPC and she was abetted to commit suicide.

10. Ext.P8 is the statement of Smt.Jaya recorded by

PW11, a Head Constable attached to Irinjalakuda Police Station. On getting intimation from the Jubilee Medical Mission Hospital, Thrissur regarding treatment of Smt.Jaya there, he reached the hospital and recorded her statement. Based on the said statement, PW9 Sub Inspector of Police registered a crime as per Ext.P7. Ext.P8 was recorded on 10.02.2006, which was on the very next day of Smt.Jaya sustaining burn injuries. She expired on 13.02.2006. In Ext.P8 he has precisely stated about the reasons for her attempting to commit suicide and also the harassment perpetrated by the appellant. It was stated in Ext.P8 about the incident took place at her parental house on the day when she went there in connection with the purchase of gold ornaments. From her narration about the incidents transpired on 09.02.2006, it is evident that on account of the delay in handing over the drilling machine, she was assaulted by the appellant. She proceeded to state that after sometime she felt frustrated and disappointed owing to the assault and that impelled her to

commit suicide. She also stated that it was the appellant, who rescued her and took to the hospital. It is also her version that the appellant sustained burn injuries and was undergoing treatment in the same hospital.

11. Since her health deteriorated a request was made to the jurisdictional Magistrate, PW15 and accordingly he had recorded the statement of Smt.Jaya. Ext.P13 is the

statement. It was recorded at about 2.00 p.m. on 11.02.2006. She succumbed to the injuries on 13.02.2006. In Ext.P13, Smt.Jaya gave a statement almost similar to what she stated in Ext.P8, particularly regarding the incident that took place on 09.02.2006. From the oral testimony of PW15 and the certificates of the doctor he had obtained in Ext.P13 about the health condition of the deceased, it is quite evident that she was well oriented at the time when she gave the statement. Similar versions are given by the deceased in her dying declaration and Ext.P8 which also became relevant under Section 32(1) of the Evidence Act, 1872. In the light of the said evidence there

cannot be any doubt about the incident transpired on 09.02.2006.

12. Evidence tendered by PWs.1, 3 and 4 concerning

the incidents occurred in connection with the purchase of gold ornaments and also in May, 2004 tallies with the versions of the deceased in her dying declarations. Of course, the incident in May 2004 was not seen by the said witnesses, but disclosed to them by the deceased. Those incidents also contributed to the death of Smt.Jaya, and therefore their versions can be acted upon. From the above, the prosecution successfully proved that the appellant physically and mentally tortured Smt.Jaya on several occasions while they were living as husband and wife.

13. The learned counsel for the appellant ably

elucidated the essential ingredients of the offences of abetment to commit suicide and the cruelty that attracts an offence under Section 498A of the IPC. After referring to Sections 107 and 306 of the IPC, the learned counsel vehemently argued that mens rea is a necessary constituent in order to constitute an offence of abetment to commit suicide.

14. The Apex Court in Wazir Chand v. State of

Haryana [(1989) 1 SCC 244] considered that question. It was held that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under Section 306 of the I.P.C. for abetting the commission of suicide. In S.S.Chheena v. Vijay Kumar Mahajan and another [(2010) 2 SCC 190], the Apex Court held that 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, conviction cannot be sustained. It is further explained that the intention of the legislature is clear that in order to convict a person under Section 306 of the IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no other

option and that act must have been intended to push the deceased into such a position that he committed suicide.

15. The Apex Court in Rajesh v. State of Haryana

[(2020) 15 SCC 359] followed the law laid down in Ramesh Kumar case [(2001) 9 SCC 618]. A three-Judge Bench of the Apex Court in Ramesh Kumar held that instigation is to goad, urge forward, provoke, incite or encourage to do an act. To satisfy the requirement of instigation, though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an instigation may have to be inferred.

16. In Satbir Singh and another v. State of Haryana [(2021) 6 SCC 1], the Apex Court held that a bare

reading of the provision indicates that for the offence under Section 306 of the IPC the prosecution needs to first establish that a suicide has been committed. Secondly, the prosecution must also prove that the person who is said to have abetted the commission of suicide, has played an active role in the same.

17. It emerges therefore that for constituting an

offence under Section 306 of the IPC the prosecution must establish firstly that a suicide has been committed, and secondly that the person who is said to have abetted the commission of suicide, has played an active role in the same with such a mens rea.

18. The appellant had slapped Smt.Jaya on 09.02.2006

when she was late in bringing the drilling machine. There is an allegation that the appellant uttered as to why she could not die herself. It has been stated by Smt.Jaya in both of her statements that the appellant was short-tempered. It may

be noted that it was he who rescued Smt.Jaya by bringing down the fire and taking her to the hospital. From the said facts and

also the nature of the incidents that took place, it is quite evident that the appellant due to the sudden provocation slapped the deceased. The said facts do not indicate that the appellant had an intention to instigate Smt.Jaya to commit

suicide. The evidence tendered by the prosecution is insufficient to answer the requirement of mens rea as laid down by the Apex Court in the aforesaid decisions. Hence, I hold that commission of an offence under Section 306 of the IPC by the appellant is not proved beyond doubt. His conviction for the said offence is therefore liable to be set aside.

19. While commission of an offence of abetment to

commit suicide depends upon the mens rea of the indictee, cruelty as defined in the explanation to Section 498A of the IPC is the conduct of the indictee in a nature as is likely to drive a woman to commit suicide. Hence, what amounts to cruelty is dependent on the consequence of the act of the indictee. That depends on the attitude, reflection and reaction of the victim. Here, the acts perpetrated by the appellant

although he had no mens rea to impel Smt.Jaya to commit suicide, she, unbearable by such acts, had committed suicide. The said acts although does not amount to an offence of abetment to commit a suicide, amounted to an offence punishable under Section 498A of the IPC. Accordingly, the conviction of the appellant for the said offence is confirmed.

20. In the result, this appeal is allowed in part.

Conviction of the appellant for the offence under Section 306 of the IPC and the sentence thereof are set aside. Conviction of the appellant for the offence under Section 498A of the IPC is confirmed and the sentence is modified. He is sentenced to undergo rigorous imprisonment for a period of 2 (two) years. Set off allowable under Section 428 of the Code is allowed. The appellant shall surrender before the court below within one month.

Sd/- P.G. AJITHKUMAR, JUDGE dkr

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