

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

CRL.A.No. 787 of 2005 ()

**AGAINST THE JUDGMENT IN SC 400/2003 of ADDL.DISTRICT & SESSIONS COURT
FAST TRACT (ADHOC)-I, KOZHIKODE**

APPELLANT/ACCUSED ::

**VIJAYAN, S/O KANARAN,
AGED 38 YEARS, ANIKKATTU MEETHAL, MUYIPOTH
MEPPAYYUR, KOZHIKODE DISTRICT.**

BY ADV. SRI.M.M.ABDULRAHIMAN

RESPONDENTS/COMPLAINANT/STATE :

- 1. S.H.O. OF MEPPAYYUR POLICE STATION**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR.**

BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

CRL.A.No. 787 of 2005 ()

APPENDIX

PETITIONER(S)' ANNEXURE :

**ANNEXURE I : TRUE COPY OF JUDGMENT IN S.C.NO.400/2003 ON THE FILE
 OF THE HONOURABLE ADDL.DISTRICT & SESSIONS COURT,
 KOZHIKODE.**

RESPONDENT(S)' ANNEXURE :

NIL

**/TRUE COPY/
PA TO JUDGE**

VS

K.RAMAKRISHNAN, J.

Criminal Appeal.No.787 of 2005

Dated this the 5th day of October, 2015

JUDGMENT

Accused in SC No.400/2003 on the file of the Additional District and Sessions Court, Fast Tract(Adhoc-I), Kozhikode, is the appellant herein. The appellant was chargesheeted by the Sub Inspector of Police of Mappayur Police station in Crime No.46/2002 of that police station under Section 306 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that prior to 29.05.2002, the accused had sexual intercourse with the deceased Janu, as a result of which she became pregnant and the accused induced her to abort the pregnancy, later he denied the responsibility of her pregnancy and on account of that abetment, she committed suicide on 29.05.2002 on 2 p.m. and thereby he had committed the offence punishable under Section 306 of the Indian Penal Code.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court-II, Perambra, where it was taken on file and thereafter it was committed to Sessions Court, Kozhikode by the learned Magistrate under Section 209 of Code of Criminal Procedure(hereinafter called 'the Code' for short). After committal, Sessions Judge, Kozhikode took cognizance of the case as SC.No.400/03 and thereafter it was earlier made over to Assistant Sessions Court, Koyilandy for disposal. Thereafter the case was withdrawn by the Sessions Judge and it was made over to Additional District and Sessions Court, Fast Track(Adhoc -I), Kozhikode, for disposal.

4. When the accused appeared before the court below, after hearing both sides, charge under Section 306 of the Indian Penal Code was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 11 were examined and Exts.P1 to P15 were marked on the side of the prosecution. After closure of the prosecution

evidence, the accused was questioned under Section 313 of the Code and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had not committed any offence and he is innocent of the same and he has been falsely implicated in the case. Since the evidence in this case did not warrant an acquittal under Section 232 of the Code, the accused was called upon to entire on his defence by the Additional Sessions Judge, but no defence evidence was adduced on his side. After considering the evidence on record, the court below found the appellant guilty under Section 306 of the Indian Penal Code and convicted him thereafter and sentencing him to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for 6 months. Set off was allowed for a period of detention already undergone under Section 428 of the Code. Aggrieved by the same, the present appeal has been preferred by the appellant/accused before this Court.

5. Heard the learned counsel for the appellant Sri.Abdurahiman and Smt.Seena Ramakrishnan, learned Public Prosecutor appearing for the State of Kerala.

6. The counsel for the appellant submitted that there is no legal evidence adduced on the side of the prosecution to prove the ingredients of abetement said to have been committed by the accused, so as to instigate the deceased to commit suicide. Except the evidence of PW2, there is no other evidence to connect the accused with the deceased Janu or her illegal relationship with him and cause of pregnancy. PW2 did not file any complaint and the complaint was filed through PW3 and he disowned the contents of Ext.P2 complaint. The delay in intimating the matter of pregnancy by PW2 to any of her relatives creates doubt regarding the involvement of the accused in the alleged commission of the offence. So even assuming that he had said something on provocation, it is not sufficient to attract the ingredients of offence under Section 306 of the Indian Penal Code and the court below was not justified in convicting the appellant for the

offences alleged and he prayed for acquittal of the appellant.

7. On the other hand, the learned Public Prosecutor submitted that the evidence of PW2 coupled with Exts.P3 to P6 will go to show that the accused was responsible for the pregnancy of the deceased and just prior to the death of the deceased, the accused met her and disowned his responsibility for the pregnancy and that prompted the deceased commit suicide. So the circumstances will go to show that the accused was responsible for the death of the deceased and as such, court below was perfectly justified in convicting the appellant for the offence alleged and no interference is called for.

8. The case of the prosecution as emerged from the prosecution witnesses is as follows: On 29.05.2002 at about 2 p.m. the deceased Janu, sister of PW2 who was residing with her mother, committed suicide from her house by hanging. When this fact was known to the neighbours, PW1, one of the neighbours gave Ext.P1

statement to PW10 Head Constable attached to Mappayur Police Station, who registered Ext.P11 First Information Report as Crime No.46/2002 of that police station originally under the caption 'unnatural death'. Thereafter, the investigation was undertaken by PW11 and he went to the place of occurrence and conducted inquest on the body of the deceased in the presence of PW9 and others and prepared Ext.P10 Inquest report. Thereafter, the body was sent for postmortem examination and postmortem examination was conducted by PW7, who gave Ext.P7 Postmortem certificate, in which he had given the cause of death due to hanging and on the postmortem examination, it was revealed that the deceased was pregnant by 5 months. According to the prosecution, PW2, sister of the deceased, informed her husband about the accused's involvement in the pregnancy of the deceased and also disclosed about the cause of death as disclosed by the deceased to her and on that basis PW3, her husband gave Ext.P2 complaint to PW11. On that basis, PW11 gave Ext.P12 report to the Sub Divisional

Magistrate Court, to alter the nature of offence as one under Section 306 of the Indian Penal Code and showing the name of the accused as the person responsible for the death and requested to send the records to Judicial Magistrate court for proper investigation. Thereafter, he conducted investigation and he sent Ext.P13 search memorandum to court and conducted search of the house on 17.06.2002 in the presence of PW9 and another and recovered Ext.P3 Prescription given by PW5, Ext.P4 scan report, Ext.P5 blood report and Ext.P6 bill issued from Dr.Adiyodi's scan centre by PW6, as per Ext.P9 search list. Thereafter, the accused surrendered before him on the basis of the orders of the court and after recording his arrest and subjecting him to medical examination by PW8, who issued Ext.P8 potency test certificate, he was released on bail. He had collected Ext.P14 prescription said to have been given by Dr.Lalitha and produced this document along with Ext.P15 property list. He questioned the witnesses and recorded their statements and he completed the investigation and submitted final report in

the case.

9. In order to prove the offence under Section 306 of the Indian Penal Code, the prosecution must establish that the deceased committed suicide and the accused had abetted the deceased to commit suicide. In order to attract the offence under Section 306 of the Indian Penal Code the abetment said to have been committed by the accused must be established by the prosecution by proving the ingredients as mentioned in 107 of the Indian Penal Code.

10. In this case the prosecution relies on the evidence of PWs 2, 3, 5 and 6 to prove their case. In Ext.P1 given by PW1, the neighbour, there is nothing mentioned about the reason for the deceased to commit suicide and they did not even mentioned any doubt regarding the reason for the deceased to commit suicide as well. The evidence of PW3, the husband of PW2 is also not helpful much to prove the reason for the deceased to commit suicide. He had only some hearsay knowledge about what his wife had stated to him. According to him,

when PW2 informed about the involvement of the accused in impregnating the deceased, he gave Ext.P2 complaint to the police. But when he was cross examined, he has stated that he was not the author of Ext.P2 and it was written by one Gangadharan Master and he did not know the contents of Ext.P2 complaint and it was not read over to him before he affixing his signature. Further he had also stated that when they went to the house of the deceased on hearing the incident of suicide in the jeep, PW2 did not disclose about any doubt regarding the death. On the next day of the incident she disclosed about the same. So his evidence is not helpful to prove the involvement of the accused in the commission of the crime.

11. Then the evidence is that of PW2, the sister of the deceased, who had spoken about the relationship between the accused and her deceased sister and circumstances according to her, to the deceased to commit suicide. According to her, on 03.05.2002, the deceased came to her house complaining headache and

thereafter they went to PW5 and at that time, she disclosed that she was pregnant and when she asked who was responsible for the same, she told that it was the accused. Thereafter, again on 20.05.2002, they went to Dr.Radha and at that time Vijayan, the accused was also present and she expressed her willingness to abort the pregnancy. But Dr.Radha PW5 told that it was not possible from that hospital and wanted to go to some other hospital and gave a chit to contact Dr.Lalitha of Malabar Hospital. Accordingly, they went to Malabar Hospital on 24.05.2002 and Dr.Lalitha told that abortion can be done from there but they had to pay Rs.7,000/- by the expenses for the same. Thereafter, they decided to go there on 28.05.2002 for that purpose and the deceased told her that she would come to her house before going to the hospital. Since the deceased did not come, PW2 went to her house on the evening of 28.05.2002 and at that time, the deceased told her that the accused had disowned the responsibility for the pregnancy and told her to go and die. PW2 told that she said the deceased to

come and stay with her but she did not come and on the next day, the deceased committed suicide. But in the cross examination, she had admitted that though she knew about the pregnancy and the accused was responsible for the pregnancy, was on 03.05.2002, she did not disclose this fact either to her husband or even to her mother. Further she had also deposed that on 29.05.2002, when they came to know about the death of the deceased, she along with her husband went to the house of the deceased in a jeep but even at that time, she did not disclose about any of these things to her husband. But her case was that since if it is known to others, it will cause harm to the family, she did not disclose the same. But this cannot be believed for a moment because she might not have disclosed the pregnancy at the time when she came to know about the same, namely on 03.05.2002, 20.05.2002 or even on 25.05.2002, when she went to the house of the deceased. But when she came to know about the act committed by the deceased by ending her life by hanging, natural instinct will be to disclose these

facts to the near relatives, which she had not done. Further she did not mention the exact date or time at which the accused had met the deceased after 24.05.2002 to disown his responsibility for the pregnancy and also asked her to go and die. Unless it is proved by the prosecution that these things happened very close proximity to the date of death, even assuming that the entire prosecution case is accepted that he had scolded her and asked her to go and die alone is not sufficient to come to the conclusion that he had instigated and abetted the deceased to commit suicide. The time between the death and the alleged incident in which he had disowned his responsibility and asked her to go and die are very much relevant for the purpose of connecting the accused with the commission of the crime.

12. In the decision reported in ***Sudhakar and another v. State of Maharashtra*** [AIR 2000 (SC) 2602], it has been observed that unless there is cogent evidence to prove that the accused committed rape on the deceased and death prompted the deceased to

commit suicide, it cannot be said that the accused had committed the offence punishable under Section 306 of the Indian Penal Code. That was a case where the alleged rape was committed some 5 or 6 months prior to the incident and she became pregnant, only later she committed suicide and the complaint was filed. The delay in filing the complaint was not explained as well and there is no other evidence to connect the accused for the alleged commission of rape as well. So in such circumstances, the Honorable Supreme Court held that it is not sufficient to convict the accused for the offence punishable under Section 306 of the Indian Penal Code and acquitted him of that charge.

13. Further in the decision reported in ***Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh*** [AIR 2002 (SC) 1998], the Supreme Court had held that even assuming that there were some quarrel between the deceased and the accused and accused told her 'to go and die' that itself would not constitute the ingredient of 'instigation' or abetment to commit suicide if

the deceased had committed suicide later. Presence of mens rea is necessary concomitant of instigation, the fact that deceased committed suicide after two days of quarrel during which the said words were uttered by the accused would show that the suicide was not direct result of quarrel and it cannot be said that accused had committed the offence punishable under Section 306 of the Indian Penal Code.

14. Further in the decision reported in ***Randhir Singh v. State of Punjab*** [2004 (3) KLT SN 94 (C.No.129)SC] the Honorable Supreme Court, while considering the circumstances under which the ingredient of abetment mentioned in Section 306 of Indian Penal Code held that :

“abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 of the Indian Penal Code. The Courts should be extremely careful in assessing the facts and

circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. 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 of abetting the offence of suicide should be found guilty."

15. So it is clear from the above decisions that unless it is proved by the prosecution that the close proximity of the quarrel between the accused and the deceased and uttering the words which promoted the deceased to commit suicide, it cannot be said that the mere words spoken to by the accused even assuming that the entire evidence of PW2 is admitted alone will be sufficient to attract the offence under Section 306 of the Indian Penal Code said to have been committed by the accused and that is not sufficient to convict the accused

for the said offence. In this case the doctor's evidence namely PWs 5 and 6 will only go to show that they examined the deceased and came to the conclusion that she was pregnant and she agreed for an abortion. There was nothing on record to show that or inferrable from the documents namely Exts.P3 to 6, the medical documents that deceased was accompanied by the deceased or PW2 and it did not disclose whether PW2 was also present along with the deceased during those times. Further Dr.Lalitha to whom they last consulted, who had agreed for conducting abortion on the deceased was not even cited as written or examined as well on the side of the prosecution. The evidence of PW11, investigating officer will go to show that none of the witnesses questioned by him stated that they had seen the deceased in the company of the accused or the accused going to the house of the deceased just prior to the commission of the suicide by the deceased or his relationship with the deceased. The evidence of other witnesses are not sufficient to come to the conclusion that the accused was

responsible for the commission of the crime. So under the circumstances, in the case where it rests on circumstantial evidence, each link of circumstance which lead to the chain of circumstance pointing out to the accused that it was he who had committed the crime is established by the prosecution, it cannot be said that the prosecution has proved the case against the accused beyond reasonable doubt and that benefit must be given to the accused. In this case the link of the accused going to the house of the deceased and uttering the words as deposed by PW2 and the proximity between that time and the death has not been established by the prosecution and thereby the link has been broken and that benefit must be given to the accused and this fact has not been considered by the court below before coming to the conclusion that the prosecution has proved beyond reasonable doubt that the deceased committed suicide on account of the abetment committed by the accused and consequential conviction entered by the court below against the appellant under Section 306 of the Indian Penal Code is unsustainable in

law and the same is liable to be set aside. So the appellant is entitled to get acquittal of the charge levelled against him, giving him the benefit of doubt.

16. In view of the finding that the accused is entitled to get acquittal, the sentence imposed is not proper and the same is also set aside.

In the result, the appellant succeeds and the appeal is allowed. The order of conviction and sentence passed by the court below against the appellant under Section 306 of the Indian Penal Code is set aside and the appellant is acquitted of the charge levelled against him giving him the benefit of doubt. He is set at liberty. The bail bond executed by him stands cancelled. The court below is directed to refund the fine amount if any remitted by the appellant to him on making necessary application for this purpose. Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN
JUDGE

VS