

BAIL SLIP

The Appellant/Accused namely Daniel Durairaj, S/o.Jayakumar, was directed to be released on bail as per the order of this Court dt.26.11.2009, in MP.No.1/2009 in Crl.A.No.726/2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.726 of 2009

Daniel Durairaj .. Appellant/Accused

v.

State of Puducherry
Rep. by Inspector of Police,
Thirunallaru Police Station,
Karaikal. .. Respondent/Complainant

Prayer:Criminal Appeal filed under Section 374 CrPC. against the judgment of conviction and sentence, dated 03.11.2009 made in S.C.No.57 of 2009 on the file of the learned Additional Sessions Judge, Puducherry at Karaikal.

For Appellant : Mr.K.M.Subrahmanian

For Respondent : Mr. M.R.Thangavel

Additional Public Prosecutor (Pondy)

J U D G M E N T

सत्यमेव जयते

This Criminal Appeal arises out of the Judgment of conviction and sentence, dated 03.11.2009 made in S.C.No.57 of 2009 on the file of the learned Additional Sessions Judge, Puducherry at Karaikal whereby the appellant/accused was convicted for the offence under Section 306 IPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.10,000/-, in default in payment to undergo three months simple imprisonment.

2.The case of the prosecution is as follows:

(i)P.W.1/Maheswari is the elder sister, P.W.2/Sambandam is the father and P.W.3/Shyamala is the mother of the deceased Geetha and they were residing at Thirunallar. P.W.4 to P.W.6 are the

neighbours. P.W.7/Sathya was working along with the deceased Geetha in Johnson Tiles Company and P.W.9/Sankaran Pillai is working as Senior Manager (Personnel) in the Johnson Tiles Company where the deceased Geetha and the appellant/accused were working. The deceased Geetha studied upto 10th standard and was working under the appellant/accused as Helper in Johnson Tiles Company at Thennankudi. The deceased Geetha and the appellant/accused loved each other for about six months. P.W.1 and P.W.3 knew about the love affair between them. The appellant/accused used to visit the house of the deceased Geetha and on one occasion, P.W.1, P.W.3 and the deceased Geetha visited the house of the accused. On coming to know about the love affair between the deceased Geetha and the appellant/accused, P.W.3/Shyamala stopped the deceased Geetha from going to work. Her father does not know about the love affair of the deceased Geetha. The appellant/accused also presented scent bottle (M.O.1) and a covering chain (M.O.2). On 07.02.2008 at about 7.00 p.m., the appellant along with his friend came to the house of the deceased Geetha and at that time, P.W.1 and the deceased Geetha alone were present in their house. The appellant/accused asked the deceased Geetha to promise him that she will not interfere in his life and the same was done by the deceased Geetha only at the compulsion of the accused. The appellant/accused again and again made her to promise and the friend of the accused asked P.W.1 to advise her sister, namely the deceased Geetha, accordingly. Then the deceased Geetha asked the appellant/accused to get out of the house but the appellant told her that he would get out only after informing her parents. After some, the appellant and his friend gone away. Then the deceased Geetha was crying and when P.W.1 asked her, the deceased Geetha narrated the incident to her. Thereafter, the deceased Geetha asked P.W.1 to buy tablets for her headache and therefore she went. When P.W.1 returned home along with her mother, the deceased Geetha was found in an unconscious state and found that she consumed pesticide. Immediately, P.W.1 sent the deceased Geetha along with her mother and neighbour to the hospital in an autorickshaw and at that time, her father, namely, P.W.2 came there and he also went along with them. Thereafter, the deceased Geetha was referred to Government Hospital, Karaikal for further treatment and Ex.P.4 is the intimation. On 08.02.2008 at about 7.00 a.m., the deceased Geetha died. Ex.P.5 is the intimation given by the Hospital to the Police. Thereafter, P.W.1 went to Thirunallar Police Station and lodged a complaint/Ex.P.1.

(ii) P.W.10/Venkatachalapathy, Sub-Inspector of Police, Thirunallar Police Station received the complaint/Ex.P.1 on 08.02.2008 at about 10.15 a.m. and registered a case in Crime No.25/2008 under Sections 306 IPC r/w. 34 IPC and prepared the printed FIR/Ex.P.8. Thereafter, P.W.10 went to the Government Hospital, Karaikal and conducted inquest in the presence of the panchayatars and recorded their statements. Ex.P.9 is the inquest report. Thereafter, P.W.10 sent the body of the deceased Geetha for conducting autopsy. P.W.8/Dr.Narasimha Murthi, Grade I Medical

Officer attached to the Government Hospital, Karaikal conducted post mortem on the dead body of the deceased Geetha on 08.02.2008. He took viscera for chemical examination. Then, he issued the final opinion according to the report of the chemical examination. Ex.P.6 is the report of the chemical examination and Ex.P.7 is the post mortem report with final opinion. Then, P.W.10 went to the place of occurrence, examined the witnesses and recorded their statements and drew rough sketch. Thereafter, he seized M.O.1 and M.O.2 in the presence of the witnesses under seizure mahazar/Ex.P.2. On the same day, i.e. on 08.02.2008 P.W.10 arrested the appellant/accused and sent for judicial custody. Thereafter, P.W.10 went to the Johnson Tiles Company, examined the witnesses and recorded their statements. Then, he examined P.W.8, who conducted post mortem and thereafter sent the Material objects, viz., M.O.1 and M.O.2 to the Court under Form-95./Ex.P.10. Thereafter, P.W.10 altered the Section into 306 IPC from 306 IPC r/w. 34 IPC under Ex.P.11.

(iiii)After completing the investigation, P.W.10/Venkatachalapathy, Sub-Inspector of Police, Thirunallar Police Station filed the charge sheet under Section 306 IPC.

3.The learned trial Judge after following the procedure framed necessary charges against the accused. Since the accused pleaded not guilty, the trial Court examined P.W.1 to P.W.10 and marked Exs.P.1 to P.11 and M.O.1 and M.O.2. The trial Court placed the incriminating evidence before the accused and the accused denied the same in toto. On the side of the defence, no witness was examined and no documentary evidence was marked. On considering the oral and documentary evidence, the trial Court convicted the accused under Section 306 IPC as stated above.

4.Challenging the conviction and sentence passed under Section 306 IPC, the learned counsel appearing for the appellant would submit that there is delay in preferring the complaint, which is fatal to the case of the prosecution. He would further submit that the evidence of P.W.1 to P.W.3 are not reliable and the ingredients of Sections 306 and 107 IPC has not been made out. Those factum was not considered by the Trial Court. Hence, he prayed for setting aside the conviction and sentence passed by the Trial Court. To substantiate his arguments, the learned counsel appearing for the appellant relied upon the following decisions:

- a) 2007 Cri.L.J. 3420 (Bhagwan Das vs. Kartar Singh and others)
- b) AIR 2010 SC 327 (Gangula Mohan Reddy vs. State of A.P.)
- c) 2008 (2) MLJ (Cr1) 645 (SC) (Sohan Raj Sharma vs. State of Haryana)
- d) AIR 2002 SC 1998 (Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh)
- e) 2008 Cri.L.J. 2569 (1) (Sohan Raj Sharma vs. State of Haryana)

5. Resisting the same, the learned Additional Public Prosecutor (Pondy) would submit that the delay has been properly explained. The alleged occurrence said to have taken place on 07.02.2008 at about 8.30 p.m., and the complaint has been given on 08.02.2008. So, the delay is not fatal to the case of the prosecution. He would further submit that P.W.10/Investigating Officer is the competent person to investigate. So, the judgment of conviction and sentence under Section 306 IPC is sustainable, hence, he prayed for dismissal of the appeal.

6. Considered the rival submissions made on both sides and perused the typed set of papers.

7. The case of the prosecution is that the deceased Geetha and the appellant has loved each other and when it was known to the family of the deceased, P.W.2 and P.W.3, namely the father and mother of the deceased Geetha has stopped her from going to the work along with the appellant at Johnson Tiles Company. But on 07.02.2008 the appellant and his friend came to the house of the deceased and obtained a promise from her as to not to interfere with the marital life since he is going to marry another girl and then, the appellant left from her house. Thereafter, the deceased Geetha was depressed and she committed suicide by way of consuming poison on the same day i.e. on 07.02.2008 at about 8.30 p.m. Immediately she was taken to the Primary Health Centre at Thenur and then she was referred to Government Hospital, Karaikal where she died on the next day i.e. on 08.02.2008 and then only, complaint has been given by P.W.1, namely, the sister of the deceased Geetha and she is a minor. The learned counsel appearing for the appellant mainly focus on the delay in preferring the complaint because if the complaint has been given when the deceased was alive, she may have given dying declaration as to what persuaded her to commit suicide. So the delay in preferring the complaint is fatal to the case of the prosecution.

8. Now, this Court has to decide whether the delay in preferring the complaint is fatal to the case of the prosecution? Admittedly as per the evidence of P.W.1 to P.W.3, the alleged occurrence said to have taken place on 07.02.2008 at about 8.30 p.m. and the complaint has been given on 08.02.2008 at about 8.30 a.m. after the deceased Geetha died at 7.00 a.m. So, the delay has not been properly explained. It is also pertinent to note that in the intimation/Ex.P.4 it was specifically mentioned as "Alleged consumption of Ant Killer powder on today around 8.30 p.m at her residence" and nothing more has been mentioned. In such circumstances, I am of the view that the delay has played vital role because the deceased Geetha was alive for about 12 hours after she consumed poison but they have not taken any steps to record dying declaration.

9. Besides P.W.1, in her evidence has stated that her sister, namely the deceased Geetha, after she was admitted in the hospital, she was conscious and she talked to her. So, I am of the view that

the delay is playing vital role, that too, in the case under Section 306 IPC is concerned, whether the appellant has abetted the commission of suicide has to be decided. In such circumstances, I am of the view that the delay in preferring the complaint is fatal to the case of the prosecution.

10.As per the evidence of P.W.1 to P.W.3, as soon as they came to know about the love affair between the appellant and the deceased Geetha, they stopped her from going to work and so, she was depressed. It is also pertinent to note that P.W.3, the mother of the deceased Geetha has gone to the extent of saying that they gone to the house of the appellant where her daughter has prepared the tea. But her evidence itself is contradict with each other because in her chief examination, she has stated that as soon they came to know about their love affair, they stopped her from going to work and also they cautioned her not to involve in love affairs. In such circumstances, it is painful to accept that the mother of the deceased, namely, P.W.3 has gone to the house of the appellant along with her daughter. Furthermore, the alleged occurrence said to have taken place only after the deceased Geetha was stopped from going to work.

11.The case of the prosecution is that on 07.02.2008 the accused and his friend went to the house of the deceased and obtained a promise from the deceased Geetha. So she committed suicide. The only evidence available is P.W.1. Now, this Court has to decide whether the evidence of P.W.1 is reliable?

12.P.W.1, in her chief examination has stated that two days prior to the alleged occurrence, the deceased Geetha was stopped from going to work. In her cross examination, she has stated that her sister and the accused were chatting in a room and she has over heard the same. She further submitted that when the appellant left the house, her sister was depressed and crying and then she made enquiry and at that time, she has stated as to what has happened. But whereas in the cross examination she fairly conceded that as soon as their parents came to know about the love affair between the appellant and the deceased, they stopped her from going to work and made arrangements for marriage. She has also fairly conceded that they are belonging to Hindu religion and the appellant belongs to Christian religion and their parents will not accept for the inter religious marriage. So, considering the chief and cross examination of P.W.1, I am of the view that the evidence of P.W.1 is not wholly reliable and it is partly reliable and it requires corroboration.

13.P.W.4/Revathy who is a neighbour residing opposite to the house of the deceased, has stated that on 07.02.2008 at about 8.00 p.m. the appellant came to the house of the accused. She has also stated that the appellant used to visit the house of the deceased

then and there and will stay about 2 to 2-1/2 hours. Whereas in Section 313 Cr.P.C. questioning, the appellant has denied the fact that he has visited the house of the deceased. In such circumstances, I am of the view that the evidence of P.W.4 in way help the case of the prosecution.

14.P.W.9/Sankaran Pillai who is the Senior Manager of Johnson Tiles Company where the appellant and the deceased Geetha working, has stated that he did not know about the love affair between the appellant and the deceased but he has given certificate that the accused is doing the work very well. P.W.7/Sathya who is the friend of the deceased, in her evidence, has stated she knew about the love affair between the appellant and the deceased Geetha. But, P.W.2 and P.W.3, has stated that as soon as they came to know about the love affair between the appellant and the deceased, they stopped her from going to work and after two days only, she committed suicide by way of consuming poison. So, except Ipse Dixit P.W.1, no other evidence is available to show that the appellant has obtained forcible promise from the deceased which forces her to commit suicide. At this juncture, it is appropriate to consider Sections 107 and 306 IPC, which reads as follows:

107.Abetment of a thing

A person abets the doing of a thing, who-

First: -Instigates any person to do that thing; or

Secondly: -Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly: -Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation:- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

306.Abetment of suicide

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.

15.It is also to appropriate to consider the decisions relied upon by the learned counsel appearing for the appellant.

(a) In the decision reported in 2007 Cri.L.J. 3420 (Bhagwan Das vs. Kartar Singh and others), wherein in paragraph Nos.9, 10 and 11, it was held as follows:

"9.The word "abetment" has been defined in Section 107 IPC as follows:

"Abetment of a thing A person abets the doing of a thing, who

First - Instigates any person to do that thing; or,

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of the act, and thereby facilitates the commission thereof, is said to aid the doing of the act."

10. Learned counsel for the appellant has relied on the decision of this Court in Brij Lal vs. Prem Chand & Anr. AIR 1989 SC 1661. In that case it was held that :

"Where there was overwhelming evidence that the accused had made the life of his wife intolerable by constantly demanding money and made it clear to her that if she wanted to die, she may do so on very same day and give him relief forthwith, thereby spurring her and goading her to commit suicide, the case would squarely fall under the first category of abetment under Section 107."

11. On the other hand, learned counsel for the respondents relied on the decisions referred to in the impugned judgment. Thus in Netai Dutta vs. State of West Bengal JT 2005(3) SC 46, where a suicide note was involved, this Court came to the conclusion that in the suicide note there was no reference of any act or incident whereby the appellant was alleged to have committed any willful act or omission or intentionally aided or instigated the deceased to have committing suicide. Hence, it was held that there was no abetment to suicide."

(b) In the decision reported in AIR 2010 SC 327 (Gangula Mohan Reddy vs. State of A.P.), wherein it was held that the deceased committed suicide by consuming poison, appears to be hypersensitive man and accused not liable to be convicted under Section 306 IPC. It is appropriate to incorporate paragraph No.21, which reads as follows:

"21.The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 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 option and this act must have been intended to push the deceased into such a position that he committed suicide."

The above citation is squarely applicable to the facts of the present case because here it was stated that the appellant has obtained promise not to interfere with the marital life and since she was stopped from going to work, she consumed poison. In such circumstances, there is no intention or mens rea for the appellant to abet her to commit suicide, namely, mere obtaining promise will not be either direct or indirect forced her to commit suicide.

(c) In the decision reported in 2008 (2) MLJ (Crl.) 645 (SC) (Sohan Raj Sharma vs. State of Haryana), wherein it was held as follows:

"Abetment involves a mental process of instigating a person or intentionally aiding that person in doing a thing. More active role which can be described as instigating or aiding the doing of a thing it required before a person can be said to be abetting the commission of offence. Under Section 306, when there is no proof of direct or indirect acts of incitement to the commission of suicide, the person cannot be convicted under Section 306, Indian Penal Code, 1860"

(d) In the decision reported in AIR 2002 SC 1998 (Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh), wherein it was held that even during the quarrel it was remarked that the deceased to go and die, this will not come under the provision of Section 107 IPC. It is appropriate to incorporate paragraph No.9, which reads as follows:

"9.In Swamy Prahaladdas v. State of M.P. & Anr. , 1995 Supp. (3) SCC 438, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die' . This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide."

(e) In the decision reported in 2008 Cri.L.J. 2569 (1) (Sohan Raj Sharma vs. State of Haryana), wherein in paragraph No.13, it was held as follows:

"12.When the factual scenario is examined, it is clear that the accused has been described as a sexual pervert and that he had behaved like an animal and the deceased had tolerated the insulting manner in which he behaved. They were married in court. It was stated that the accused was impotent and he was trying to defame the deceased for having relationship with ladies.

13.The most significant part of the letter the deceased had written is as follows:

"I desired to kill you alongwith us but no, if you have any sense of shame you will die as a result of the sequence of events. But it do not make any difference for shameless person because these abuses will sound as correct if you realize your capacity. You have not spent even eight days in a period of eight years in peace with me. You yourself are responsible for death of these children. Flowers had been prayed for from the deities of your family regarding whom you disclosed "they are not mine they are with me from my friend. (girl friend) on, you, the condemned the day children will be born as a result of cohabitation of a woman with woman, a woman will stop giving birth to man like you." (Underlined for emphasis)

14.Above being the factual scenario, it cannot be said that the ingredients of Section 306 IPC have been established."

16.Considering the above citation along with the facts of the present case, even if the evidence of P.W.1 is wholly reliable that on 07.02.2008 the appellant along with the friend went to the house of the deceased Geetha and obtained promise from her not to interfere with the marital life, it will not in any way indirectly or actively force this deceased Geetha to commit suicide. Furthermore, as per the evidence of P.W.1 to P.W.3 as soon as they came to know about the love affair between the deceased and the appellant, P.W.2 and P.W.3 stopped her from going to work and she was depressed. In such circumstances, the Trial Court without considering all the aspects in proper perspective has convicted the appellant is unsustainable and the ingredients of Section 306 IPC has not been made out. Hence, the conviction and sentence passed by the Trial Court is hereby set aside.

17.In fine,

(a) The Criminal Appeal is allowed.

(b) The Judgment of conviction and sentence, dated 03.11.2009 made in S.C.No.57 of 2009 on the file of the learned Additional Sessions Judge, Puducherry at Karaikal is hereby set aside.

(c) The fine amount paid by the appellant shall be refunded to him.

(d) Bail bond, if any executed by the appellant shall stand cancelled.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1.The Additional Sessions Judge,
Puducherry at Karaikal.
 - 2.do thro' The Principal Sessions Judge,
Puducherry.
 3. The Judicial Magistrate No.I, Karaikal.
 - 4.do thro' The Chief Judicial Magistrate,Puducherry.
 - 5.The Inspector of Police,
Thirunallaru Police Station, Karaikal.
 - 6.The Public Prosecutor
High Court, Madras.
 - 7.The Record Keeper
Criminal Section,
High Court, Madras.
- +1 cc to Mr.P.Subramaniam, Advocate,sR.17990
- +1 cc to Government Pleader,SR.18495.

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