

**Crl.M.P.No.1430 of 2016 in
Crl.A.No. 96 of 2016**

Dr.P.DEVADASS, J.

A.1 and A.2, the spouses, who were prosecuted in Sessions Case No.101 of 2015 on the file of learned Sessions Judge (Fast Track, Mahila Court), Nagapattinam, while challenging their conviction and sentence, seeks appeal bail.

2. A.1 is stated to have link with the deceased. She was found with extensive burn injuries on 29.12.2013, as she had attempted suicide, initially a case for an offence under Section 309 IPC has been registered, subsequently, on her breathing last on 02.01.2014, the Section of Law was altered to Section 306 of IPC.

3. Ultimately, on appreciation of the evidence adduced, the Trial Court convicted them as stated below:-

Accused	Conviction	Sentence
A.1	306 IPC.	7 years R.I and fined Rs.5,000/- in default 1 year S.I
A.2	-- do --	--- do ----- [Fine amounts are paid]

4. The learned counsel for the petitioners/appellants contended that an offence under Section 306 IPC will not arise in this case because the allegations

imputed as against the accused persons and the reasons stated for the commission of suicide by deceased will not fall under Section 306 IPC. The evidence of P.W.1, the brother of the deceased stood contradicted by evidence of P.W.5, Doctor, who recorded the earliest version of the deceased in the Accident Register. The dying declaration given before P.W.4, Judicial Magistrate also does not goes to support the prosecution case. P.Ws.3 and 7, who are daughter and son who have been examined as eye-witnesses have not witnessed the occurrence is self-evident from FIR and the dying declaration of their mother to P.W.4. The learned counsel for the petitioners also submitted that even on the evidence adduced, the charge as against A.1 is unsustainable.

5. On the other hand the learned Additional Public Prosecutor referred to the evidence of P.W.1, who had clearly stated that even 3 days prior to his sister committing suicide, his sister was humiliated by the accused. It was quite an unbearable act, she took the extreme step. In the circumstances, the learned Trial Judge has rightly convicted and appropriately punished them.

6. I have anxiously considered their rival submissions, perused the trial court judgment and the piece of evidence pointed out by both sides.

7. Infidelity of A.1 and his eyeing on other man's wife, stated to be the back ground of this case. The charges framed against the accused are under Section 306 IPC. Its essential ingredients are suicide and abetment to commit suicide.

Necessarily one has to refer to Section 107 IPC. 'Abetment' requires 'instigation', 'provocation', 'bringing pressure' upon a person to take a decision. There must be 'mensrea' on the part of the accused. What is the wish of the victim, what is her idea are not the test. But what made her to take the extreme step is the test.

8. Now, in this case, even as per prosecution version, on 29.12.2013 at about 7. p.m, A.2, had humiliated the deceased by using demeaning words and at that time, A.1 stood as a bystander, a silent spectator, an onlooker. It has been submitted by the learned counsel for the petitioners that on the said allegation a charge under Section 306 IPC could not be sustained as against A.1. It is a point to ponder over. It is an arguable point.

9. In the FIR the deceased had stated that on that day, A.2 had scolded her and linked her with her husband / A.1. P.W.1, brother of the deceased, while he took his sister in the Ambulance, the deceased is stated to have told him that as A.2 had linked her with A.1 she had attempted suicide. Immediately, when she was examined by P.W.5, the Doctor, the deceased did not implicate anybody. Then P.W.1 was also present.

10. P.Ws. 3 and 7 were projected as ocular witnesses. It has been stated by the learned counsel for the petitioners that they have been planted to strengthen the prosecution case and had they witnessed the occurrence there should have been mentioning of their presence either in the FIR or in the dying

declaration of the deceased to P.W.4.

11. There must be presence of 'mensrea' (guilty mind) for an offence under Section 306 IPC. By her abusive words A.2 did not wish that the deceased should die. Further the deceased has stated some incriminating informations to have taken place before her commission of suicide. In the interregnum what made her to commit suicide and what had happened prior to her attempting suicide and what made her to commit suicide are very relevant. Learned counsel for the petitioners pointed out that it leaves a gap in the prosecution version of the case.

12. The learned counsel for the petitioners would submit that it is highly unsafe to act upon the testimony of P.Ws. 1,3 and 7. It is the sum and substance of the submission of the learned counsel for the petitioners as opposed to the submissions made by the learned Additional Public Prosecutor.

13. In the circumstances, I find prima facie case in favour of the petitioners. They were already on bail throughout the Trial Court proceedings. Further, it will take some time to dispose of this Criminal Appeal. In the circumstances, I am inclined to grant them appeal bail.

14. Ordered as under:

(i) Appeal bail granted;

(ii) Sentence of imprisonment alone is suspended;

(iii) There shall be two sureties, for each petitioners, they and each of the petitioners shall execute a bond for Rs.20,000/- each to the satisfaction of the learned Judicial Magistrate, Sirkali, Nagapattinam

(iv) Petitioners shall also appear before the said court on 1st working day of every month until further orders.

16.02.2016

ssd

Dr.P.DEVADASS, J.

ssd

**Crl.M.P.No.1430 of 2016 in
Crl.A.No. 96 of 2016**

16.02.2016