



Bail Slip

Petitioners/Appellants/Accused 1&2 viz., 1.Dinesh Kumar,
S/o.Mookaiyan 2.Vanaroja, W/o.Kumar@Karunanithi, were released on
bail vide this Court order dt.01.09.2019 in MP(MD)1/2014 in CRL. A.
(MD) NO. 254 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL. A. (MD) NO. 254 of 2014

1.Dinesh Kumar
2.Vanaroja

.. Appellants/Accused Nos.1&2

- Vs -

The Inspector of Police,
Thiruvaiyaru Police Station,
Thiruvaiyaru,
Thanjavur District.
(Crime No.198 of 2011)

.. Respondent/Complainant

Prayer : Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to call for the records pertaining to S.C.No.275 of 2012, on the file of the Sessions Judge (Fast Track Mahila Court), Thanjavur by judgment dated 31.07.2014 and set aside the conviction and sentence and against the appellants.

For Appellants : Mr. A.Arun Prasad

For Respondent : Mr.K.Suyambulinga Bharathi
Governement Advocate (Criminal side)

JUDGMENT

The appellants are Accused Nos.1 and 2 in S.C.No.275 of 2012, before the learned Sessions Judge, (Fast Track Mahila Court), Thanjavur. Apart from these appellants / Accused Nos.1 and 2, Accused No.3 is the mother of the first appellant, who was also an accused for the offence under Section 306 of the Indian Penal Code and the trial Court acquitted the third accused from the charge and convicted the appellants 1 and 2 for the offence under Section 306



of the Indian Penal Code and sentenced them to undergo ten years of Rigorous Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo six months of Rigorous Imprisonment by judgment dated 31.07.2014.

2. The facts of the case are briefly stated hereunder:-

The case of the prosecution is that the deceased Anandhi was residing with her parents. The first appellant and the deceased Anandhi were having love affair with each other. There was some misunderstanding between both of them. On 04.09.2011, at about 07.00 a.m., the first appellant had come to the street, where, the deceased Anandhi was residing and informed her that the first appellant will not continue his relationship with her and there is nothing between them. Thereafter, the deceased went to take water near the borewell, at that time, accused No.2 / sister-in-law of the first accused abused the deceased and questioned the love affair between both of them. On the same day, at about 07.30., a.m. the deceased poured the kerosene on her and self immolated herself and she succumbed to the injuries and the appellants are the reason for the suicide of the deceased. Hence, the case was registered against them and a charge sheet was filed against the accused persons. The trial Court acquitted Accused No.3 and convicted Accused Nos.1 and 2. Aggrieved over the same, the present Appeal has been filed.

3. In order to prove the case of the prosecution, on the side of the prosecution as many as 8 witnesses were examined as PW.1 to PW.8 and 7 documents were marked as Ex.P.1 to Ex.P.7. No material objects were marked. On the side of the accused, no witness was examined nor any document was marked.

4. When the appellants were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same.

5. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid and challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellants.

Submissions

6. The learned counsel appearing on behalf of the appellants made the following submissions:

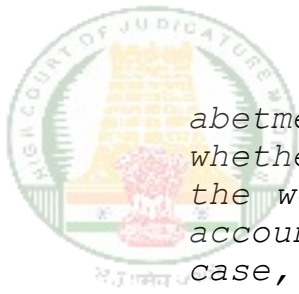
- The learned counsel appearing for the appellants submitted that in this case, except the dying declaration-Ex.P.4, recorded by P.W.6-learned Judicial Magistrate, there is no other evidence against them and in the dying declaration, it has not been stated that the appellants have instigated or abetted the deceased to commit suicide.
- He further submitted that there is no mention about the first accused / first appellant as well as the third accused in the dying declaration-Ex.P.4 and the trial Court had acquitted the



third accused / mother of the first appellant on the ground that there is no evidence against the third accused and the prosecution has proved the case beyond reasonable doubts. He further submitted that the same analogy would apply to the first appellant.

- He submitted that there is no evidence to show that the second appellant had abused and abetted the deceased to commit suicide. He would further submit that the deceased had not ended her life for any words uttered by the second accused.
- He would submit that the Doctor, who treated the deceased and certified her health condition before recording dying declaration-Ex.P.4, has not been examined. In view of the same, the dying declaration cannot be taken as the sole criteria to convict the appellants.
- He would further submit that P.W.1 is the mother of the victim. In her evidence, she had stated that earlier prior to this occurrence, the father of the deceased had beaten her, at that time, deceased consumed petrol and tried to commit suicide and the deceased was with suicide tendency for trivial issues.
- He further submitted that except the complaint-Ex.P.1 and Ex.P.5-First Information Report, the other documents had reached the Court with a delay of three months during January 2012 along with the charge sheet. The statements of the witnesses have been recorded only to suit the case of the prosecution.
- P.W.8-Investigation Officer admitted that during investigation P.W.1 had stated that her daughter was in a depressed mood for over a week. P.W.2 and P.W.3 were relatives and neighbours of the deceased, who only spoke about taking the victim to the hospital.
- P.W.1 in her evidence had stated that the villagers had prepared the complaint and she had signed the complaint and on the contrary, P.W.7-Sub Inspector of Police, categorically states that P.W.1 had appeared before him and she has given a written statement against the appellants.
- In order to substantiate his submissions, the learned counsel appearing for the petitioner relied upon the judgment of this Court in the case of **Sekar Vs. State by Inspector of Police, Tiruchengode Police Station, Namakkal District** reported in **2011-2-L.W. (Cr1.) 87**. The relevant portion of the judgment is extracted hereunder:

"6. Apart from that, the learned counsel relied on the recent judgment of the Hon'ble Supreme Court in Sontui Rama Krishna VS Sonti Shanti Sree and another reported in A I R 2009 Supreme Court 923, wherein, the Supreme Court has held that to constitute the abatement, it should be established by means of acceptable evidence by the prosecution that the accused had the animus to drive the woman to commit suicide. Mere uttering of words 'go and die' itself will not constitute such



abetment. Applying the above principles, to assess as to whether the accused really had the animus and had driven the woman to commit suicide, the Court has to take into account the credibility of the circumstances. In this case, as I have already stated, except the evidence to the effect that there were frequent domestic quarrels between the appellant and D.1, there is no other material available on record to show that the appellant had the intention to drive the woman to commit suicide. It is also not on record that the deceased committed suicide because of any abatement on the part of the appellant. Therefore, the conviction of the appellant under Section 306 cannot be sustained as the prosecution has failed to bring home the alleged guilt of the appellant. In such view of the matter, I am inclined to interfere with the findings of the trial Court."

- The learned counsel appearing for the petitioner further relied upon the judgment of this Court in the case of Arokiasamy Vs. State represented by Inspector of Police, Tuticorin South, Crime No.808 of 2002, Tirunelveli District reported in (2014) 2 MLJ (Cr1) 401. The relevant portion of the judgment is extracted hereunder:

"13.To convict a person under Section 306 IPC, it is essential that the prosecution should prove that the accused had committed any one of the overt acts enumerated in Section 107 IPC. In other words, the prosecution should prove that the accused had:

- *(a) Instigated; or*
- *(b) Entered into a conspiracy; or*
- *(c) Intentionally aided by any act or illegal omission."*

-
- He further stated that by any stretch of imagination except the dying declaration, there is no other material on record to show that the appellants had the intention to drive the woman to commit suicide.
- He further submitted that there is no mention as regards the first appellant in the dying declaration. As far as the second appellant is concerned, she has only uttered normal casual words. He further submitted that taking the dying declaration of the deceased as a whole, it could not be seen that the second appellant had abused the deceased, which abetted the deceased to self immolate herself and commit suicide.
- Though the dying declaration has been recorded by P.W.6, it could not be stated that the lower Court had appreciated the evidence and rightly convicted the appellant.
- P.W.4 has stated that he has signed in the observation Mahazar and he further stated that he was not examined by the Police.



7. The learned Government Advocate (Criminal side) appearing on behalf of the respondent Police made the following submissions:

- Per contra, the learned Government Advocate (Criminal side) appearing for the respondent Police submitted that apart from the dying declaration, there is no other material against the appellants.
- In this case, P.W.1 is the mother of the deceased. P.W.2 and P.W.3 are the neighbours. P.W.3 has stated that he called the service of 108 Ambulance and the deceased was sent through 108 Ambulance.
- P.W.5 is the Postmortem Doctor, who conducted Postmortem, given a postmortem report-Ex.P.3. P.W.6 is the learned Judicial Magistrate, recorded the dying declaration. On the complaint of P.W.1, an F.I.R came to be registered by P.W.7 and the First Information Report is marked as Ex.P.5. P.W.8 is the Investigation Officer, who conducted investigation. He went to the scene of occurrence, recorded the statement of the witnesses, prepared rough sketch and conducted inquest and sent the body for postmortem and thereafter, the doctor conducted autopsy on the body of the deceased. He further submitted that the trial Court on considering the evidence and materials placed on record, had rightly convicted the appellants.
- In order to substantiate his submissions, the learned Government Advocate (Crl. side) has placed reliance on the judgment of the Supreme Court reported in the case of **UDE Singh and others Vs. State of Haryana in Criminal Appeal No.233 of 2010.**

"16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The

<https://hcservices.ecourts.gov.in/hcservices/> of mens rea on the part of the accused in such



cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."

8. This Court has carefully considered the submissions made on either side and the entire oral and documentary evidence.

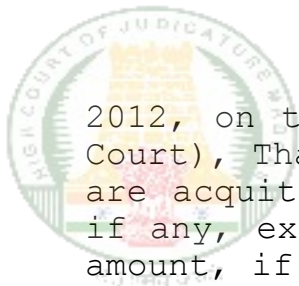
Discussion:-

9. Considering the rival submissions made by the learned counsel appearing on either side and on a perusal of Ex.P.4-dying declaration, it is seen that, nowhere, there is mention about the first appellant. The allegation as regards Accused No.2 is that she had abused the deceased, but the deceased had uttered normal casual words. Coupled with the evidence of P.W.1 and the evidence of P.W.8 that the deceased had earlier attempted suicide and she was prone to such act and one week prior to the said occurrence, she was in a disturbed mood. Further, this Court has categorically held that mere uttering of words will not amount to abatement and to constitute the abatement, it should be established by means of acceptable evidence by the prosecution that the accused had animus to drive the woman to commit suicide. Mere uttering of casual words will not constitute such abatement. From the available materials, it cannot be stated that the appellants had instigated the deceased to commit suicide. There is no material to show that the accused had intentionally aided the deceased in any manner to commit suicide.

10. For the reasons aforesaid, this Court finds that the judgment of conviction and sentence passed by the trial court is not on less evidence, but on no evidence and, therefore, the same deserves to be set aside by this Court in this Appeal. Hence, the conviction of the appellants under Section 306 of the Indian Penal Code cannot be sustained, since the prosecution failed to prove the same. It is also not on record that the deceased committed suicide because of any abatement on the part of the appellants. In such view of the matter, this Court is inclined to interfere with the findings of the Trial Court.

Conclusion

11. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants in S.C.No.275 of



2012, on the file of the learned Sessions Judge (Fast Track Mahila Court), Thanjavur, dated 31.07.2014, is set aside and the appellants are acquitted of the charge framed against them. The bail bonds, if any, executed by the appellants shall stand cancelled. The fine amount, if any, paid by the appellants shall be refunded to them.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1) The Sessions Judge, (Fast Track Mahila Court), Thanjavur.
- 2) The Inspector of Police,
Thiruvaiyaru Police Station, Thiruvaiyaru,
Thanjavur District.
- 3) The Superintendent, Central Prison, Trichy
- 4) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5) The Section Officer,-2 copies
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

JUDGMENT IN

CRL. A. (MD) NO. 254 of 2014

Dated

02.12.2019

KM/(18.12.2019) 7P 7C