

BAIL SLIP

The Appellant/accused No.1 Viz, Anbalagan S/o.Natesan was released on bail as per the order of this court dated 07.09.11 in CrI Mp.1 of 2011 in CrI Rc.1220 of 2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

CrI.R.C.No.1220 of 2011

Anbalagan
S/o.Natesan

... Petitioner

vs

The State represented by
The Inspector of Police,
Ramanatham Police Station,
Cuddalore District.
Crime No.161 of 2008

... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of learned Additional District and Sessions Judge (Fast Track Court III), Vridhachalam, Cuddalore District, and setaside the judgment passed in C.A.No.109 of 2010 on 18.08.2011 confirming the judgment of learned Principal Assistant Sessions Judge, Cuddalore Division at Vridhachalam, Cuddalore District, passed in S.C.No.256 of 2009 on 14.09.2010.

For Petitioner : Mr.V.Gopinath, senior counsel
for Mr.C.Prasanna Venkatesh

For Respondent : Mr.V.Arul
Additional Public Prosecutor

O R D E R

This revision arises against concurrent judgments of Courts below convicting petitioner/accused for offence u/s.306 r/w 34 IPC and sentencing him to 7 years R.I. and fine of Rs.5,000/- i/d 6 months S.I.

2. Petitioner along with three others faced trial in

S.C.No.256 of 2009 on the file of learned Principal Assistant Sessions Judge, Cuddalore Division at Vridhachalam, Cuddalore District, for offence u/s.306 r/w 34 IPC. Prosecution case is that A2 was the President of Aakanoor Panchayat, A1 is her husband, A3 is the brother of A1 and A4 was an employee of the said Panchayat. The accusation is that A2 with the help of accused 1, 3 and 4, while dealing with the affairs of the Panchayat, committed wrong doings and the same was pointed out by deceased, owing to which, all the accused abused deceased using filthy language as also threatened to do away with him. Ashamed, deceased committed suicide by hanging himself. A case was registered in Crime No.161 of 2008 on the file of respondent.

3. Before trial Court, prosecution examined 27 witnesses and marked 25 exhibits and 2 material objects. None were examined on the side of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 14.09.2010, while acquitting accused 2 to 4, convicted petitioner/A1 for offence u/s.306 r/w 34 IPC and sentenced him to 7 years R.I. and fine of Rs.5,000/- i/d 6 months S.I. There against, petitioner/A1 preferred C.A.No.109 of 2010 on the file of learned Additional District and Sessions Judge (Fast Track Court III), Vridhachalam, Cuddalore District, which came to be dismissed under judgment dated 18.08.2011. Hence, this revision.

4. Heard learned senior counsel for petitioner and learned Additional Public Prosecutor.

5. Learned senior counsel for petitioner submitted that petitioner and three others were tried for offence u/s.306 r/w 34 IPC. Learned senior counsel submitted that A2 is the wife of A1. A2 was the President of Aakanoor, Panchayat, A3 is the brother of A1 while A4 was an employee of the Panchayat. The deceased was also an employee of such Panchayat. The prosecution case is that the accused in the course of dealing with Panchayat affairs/accounts were guilty of much wrong doing. Deceased was taken to the garden of A1/revision petitioner, abused and assaulted. He was also threatened with loss of life if he left the employment of the Panchayat. PW-19 though has spoken to taking the deceased to meet A1 had not spoken to the abuse or other wrong doings of accused and had hence been treated hostile. According to prosecution, deceased had informed his mother PW-1 of a problem between A1 and himself, that he had been asked to sign on cheques wherein the first accused had wrongfully signed as the Vice President, cheques which ought to

have been signed by the Vice President of the Panchayat and upon his being called to sign the same, he had refused. PW-1 had further deposed that PW-19 had informed her son that A1 had called for him and when asked the purpose PW-19 had retorted that deceased could ask A1 himself. Her son who had left home on the morning of 29.09.2008 had not returned. The next day at 06.00 a.m. she learnt of the deceased having committed suicide at her residence when both she and her husband were away. Exs.P2 and P3 were letters of the deceased, one of which was addressed to his maternal uncle PW-7. Learned senior counsel submitted that no occasion arises to doubt that Exs.P2 and P3 were in the hands of the deceased. PW-26, hand writing expert, has affirmed such position. Learned senior counsel submitted that even accepting such position no conviction for offence u/s.306 IPC could be made in the instant case and in support of such submission relied upon judgment of the Apex Court in Sanju alias Sanjay Singh Sengar v. State of M.P. [2002 SCC (Cri) 1141]. Learned senior counsel further contended that PW-27, investigation officer, had admitted to the deceased having been removed from service of the Panchayat owing to wrong doings committed by him and at the relevant time, the wife of the first accused was the President of the Panchayat and A3 was the brother of A1 and A4 was the person who had been temporarily appointed in the place of deceased. Learned senior counsel submitted that in such admitted position it was possible that the deceased had resorted to suicide owing to his own wrong doings and executed Exs.P2 and P3 in an act of vengeance towards falsely implicating appellants and his immediate relatives as also the person who had been employed in his place.

6. Heard learned Additional Public Prosecutor on the above submissions.

7. Section 306 IPC makes punishable 'Abetment of suicide'. Section 107 IPC defines 'Abetment of a thing' and 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 1. - 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.

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 that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.'

8. For our present purpose, it is instigation amounting to abetment, that is relevant. Decision of the Apex Court in Sanju alias Sanjay Singh Sengar v. State of M.P. [2002 SCC (Cri) 1141] informs thus:

'12. The word 'instigate' denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25-7-1998 ensued by a quarrel. The deceased was found hanging on 27-7-1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25-7-1998 drove the deceased to commit suicide. Suicide by the deceased on 27-7-1998 is not proximate to the abusive language uttered by the appellant on 25-7-1998. The fact that the deceased committed suicide on 27-7-1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25-7-1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die.'

9. In the instant case, this Court finds that the deceased had left home the previous morning and was found dead at his residence the next, when his parents PWs.1 and 2, who had been away, returned. Following the rationale of the judgment cited, it would be hard to arrive at a finding of conviction for

offence u/s.306 IPC when there is a reasonable period between the act complained of and the commission of suicide as in the interregnum the deceased would have sufficient opportunity to reflect upon that which he intended to do. PW-19 has deposed to return of sums done away with by deceased pursuant to a Panchayat two years prior to his death and of deceased having done away with the sum of Rs.1,000/- just one week prior thereto. As rightly contended by learned senior counsel for petitioner, where admittedly the deceased has been removed from service for misappropriation of funds, the possibility of his resorting to suicide owing thereto and further, implicating petitioners and others in an act of malice while doing so, cannot be ruled out. In the circumstances, the benefit of doubt should flow to the accused.

The Criminal Revision Case shall stand allowed. The judgment of learned District and Sessions Judge (Fast Track Court III), Vridhachalam, Cuddalore District, passed in C.A.No.109 of 2010 on 18.08.2011 confirming the judgment of learned Principal Assistant Sessions Judge, Cuddalore Division at Vridhachalam, Cuddalore District, passed in S.C.No.256 of 2009 on 14.09.2010, shall stand set aside. Petitioner is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar (CS-CO)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The District and Sessions Judge
(Fast Track Court III), Vridhachalam,
Cuddalore District.
- 2.The Principal Assistant Sessions Judge,
Vridhachalam, Cuddalore District.
- 3.The Inspector of Police,
Ramanatham Police Station,
Cuddalore District.

4.The Public Prosecutor,
High Court, Madras.

COPY TO

The Section officer,
criminal Section,
High court, madras.

+lcc to Mr.prasanna venkatesh Advocate, S.R.No. 67513

Cr1.R.C.No.1220 of 2011

SSI(CO)
TR(20/12/2017)



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