

Bail Slip

The Appellant/Accused naemly Balakrishnan S/o.Vadivel was directed to be released on bail as per order of this Court dt.25.2.10 and made in MP.No.1/10 in Crl.A.No.120/10 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.120 of 2010

Balakrishnan

.. Appellant/Accused

Vs

State by
Inspector of Police,
Pennadam Police Station,
Cuddalore District,
Cuddalore.
(Crime No.50/2007)

..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the learned Additional District Sessions Judge, Fast Track Court No.3, Virudhachalam in S.C.No.300 of 2007 dated 20.04.2009.

For Appellant : Mr. Ganesh Rajan,

For Respondent : Mr. R.Ravichandran,
Government Advocate

JUDGEMENT

The sole accused in S.C.No.300 of 2007 on the file of the Assistant Sessions Judge (Fast Track Court NO.3), Virudhachalam, is the appellant herein. He stood charged for an offence under Section 306 IPC. By judgment, dated 20.04.2009, trial court, convicted the accused under Section 306 IPC and sentenced him to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.25000/-, in default, to undergo rigorous imprisonment for 4 months. Now, challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

The deceased, in this case, one Kolanchi, is the brother of the accused and husband of P.W.1. There is a long standing dispute between both the accused and the deceased family. Earlier, the accused attacked the deceased and fractured his hand. Hence, the deceased has filed a complaint against the accused and he was arrested. Subsequently, the accused also gave a complaint against the deceased and P.W.1 two weeks prior to the present occurrence and both the deceased and P.W.1 were arrested and they were released on bail. Even thereafter, the accused used to quarrel with him and scolded him with filthy language, and on the date of occurrence, the accused had beaten the children of the deceased. To lodge a complaint, the deceased went to the police, thereafter, P.W.1 also went to police station along with her children at about 6.00 p.m., but the police asked him to give the complaint on the next day morning. While they were coming back from the police station, at Pennadam, the accused was standing there and quarreled with the deceased and scolded him with filthy language and asked him to consume poison and die. Thereafter, the deceased asked P.W.1 to go to the house with the children, and he will come back little late, thereafter, at about 8.30 p.m., P.W.5 informed her that the deceased had consumed poison. Immediately, she rushed there and took the deceased to a private hospital, where he was declared dead, then she lodged a complaint (Ex.P.1) before the respondent police.

3. P.W.12, Sub-Inspector of Police, on receipt of the complaint, registered the case in Crime No.50 of 2007 for an offence under Section 306 IPC and prepared a First Information Report (Ex.P.9) and forwarded the same to the concerned higher officials .

4. P.W.13, Inspector of Police, on receipt of the first Information report commenced investigation and proceeded to the scene of occurrence, prepared Observation Mahazar (Ex.P.2) and rough sketch (Ex.P.10) in the presence of the witnesses and also recovered a liquor bottle and a pesticide, namely, Monochrotophas and a plastic tumbler (M.Os.1 to 3). He conducted inquest on the dead body of the deceased in the presence of the panchayathars. Then, he recorded the statements of the witnesses and sent the body for postmortem/autopsy to the Government Hospital, Thittagudi, Cuddalore district.

5. P.W.10, Senior Civil Surgeon, in the Government Hospital, Tittagudi, on 01.05.2007 at about 12.30 p.m., conducted postmortem/autopsy on the dead body of the deceased and he found the following injuries:-

" Ribs intact. Heart empty. Lungs ingested.
Stomach contains brownish fluid about 300

ml, with peculiar smell- liver, kidneys congested. Intestine congested, stomach and its contents, intestine with its contents, liver, kidneys sent for chemical analysis. Hyoid bone intact and sent for analysis.
"

Ex.P.7 is the Postmortem Certificate and the doctor was of the opinion that the deceased appeared to have died of Monocrotophas poison.

6. Then, P.W.13, recorded the statement of the Doctor, who conducted postmortem/autopsy on the dead body of the deceased and after completion of investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charge for an offence under Section 306 IPC and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 13 witnesses were examined and 11 documents were exhibited, besides 3 Material Objects were marked.

8. Out of the witnesses examined, P.W.1 is the wife of the deceased. He has spoken about the long standing enmity between the deceased and the accused family. According to her, in the earlier occurrence, the accused attacked the deceased and fractured his hand and based on the complaint given by the deceased, the accused was arrested, subsequently, in an another incident, the accused had given a complaint against the deceased and P.W.1 and they were also arrested and came out on bail. At that time, the accused scolded him with filthy language and asked him to consume poison and die. thereafter, the accused consumed poison and died and she filed a complaint.

9. P.W.2 is a witness to the observation mahazar and also recovery of M.Os1 to 3. P.W.3 speaks about the arrest of the accused and also the confession given by the accused. P.W.4 is closely related to P.W.1 and he speaks about the quarrel between the accused and the deceased and the deceased complained to him that the accused harassing him. P.W.5 is a person, who took the deceased to the hospital and informed the same to P.W.1. and he told that due to the dispute between the deceased and the accused, the deceased consumed poison. P.W.6 is a Doctor, who examined the visceral part of the deceased and found Monocrotophos organophosphorous in the stomach and intestine and had given a report (Ex.P.4). P.W.7 is a Head Clerk in the Judicial Magistrate Court, Virudhachalam. He sent the hyoid bone for chemical examination. P.W.8 is a Head Constable, identified the dead body for postmortem. P.W.9, Head Constable, working in the Pennadam Police Station has spoken about the earlier complaint given by the deceased against the accused and registering a

case against the accused in Crime No.4 of 2007 for the offences under Sections 294, 341, 324 IPC.

10. P.W.10 is a Doctor, who conducted postmortem/autopsy, on the dead body of the deceased and has given a postmortem certificate. P.W.11, took the deceased to a private clinic after he consumed poison along with P.W.5.

11. P.W.12, Sub-Inspector of Police, has spoken about the registration of the complaint. P.W.13, Inspector of Police, who conducted inquest on the dead body of the deceased in the presence of the panchayathars, recorded the statements of the witnesses and after completion of the investigation, he laid charge sheet against the accused.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not examine any witness or mark any documents.

13. Having considered all the above materials, the trial Court convicted the accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

14. I have heard Mr. Ganesh Rajan, learned counsel appearing for the appellant and Mr. R. Ravichandran, Government Advocate, appearing for the respondent and perused the materials available on record carefully.

15. The learned counsel appearing for the petitioner would contend that P.W.1 is the only witness spoke about the occurrence and she is the wife of the deceased and interested witness and there are lot of contradictions in her evidence with regard to the place of occurrence. Apart from that it is also admitted that there is long standing enmity between their families, and police complaints are also pending against the deceased as well as the accused and both of them were arrested and they were released on bail. In the above circumstances, it cannot be held that the accused had abetted the deceased to commit suicide. Even in the evidence of P.W.1, she did not say that only due to the words spoken by the accused, the deceased had committed suicide. The prosecution has failed to prove that there is a mensrea on the part of the accused to instigate or abet the deceased to commit suicide. The Court below without considering none of the circumstances, only relying upon the interested testimony of P.W.1 convicted the appellant/accused.

16. Per contra, the learned Government Advocate would submit that it is an admitted fact that both the deceased and the accused have a long standing enmity and both of them were arrested in their respective complaint filed by

them and they are on bail. P.W.1 is the wife of the deceased, she has clearly stated that before the occurrence while P.W.1 and the deceased were coming back to their house, the accused scolded him with filthy language and instigated him to commit suicide. It is also the evidence of P.W.4 that the deceased earlier complained her that the accused was harassing the deceased. From their evidence, the prosecution has clearly established that the accused has clear mensria to commit the offence and by his act and words, he abetted the deceased to commit suicide. The Court below after considering all those materials rightly convicted the appellant/accused.

17. I have considered the rival submissions and perused the materials available on records carefully.

18. The first and foremost question arises for consideration is whether the act of the accused would amount to abetment, leading the deceased for committing suicide.

19. Section 306 IPC prescribes the punishment for abetment of suicide and reads as follows:

"If any person commit 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."

The basic ingredients of this provision are that a suicidal death and abetment thereof. Section 107 IPC defines "abetment" and it reads as follows:-

" 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"

To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. To bring home an offence under Section 306 IPC, the prosecution has to establish that the person has committed suicide and the said suicide has been abetted by the accused, and the prosecution should also prove that the accused has a clear mensrea to commit the offence and that there ought to be an active or direct act leading the deceased to commit suicide.

20. The Hon'ble Supreme Court of India in a case reported in (2017) 1 Supreme Court Cases 433 (Gurcharan Singh /vs/ State of Punjab) has held as follows:-

"21. It is thus manifest that the offence punishable is one of abetment of the

commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide. "

In an another case reported in 2010 (12) SCC 190 (S.S.CHHEENA /VS/ VIJAY KUMAR MAHAJAN AND ANOTHER) , it is held as follows:-

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. 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 that act must have been intended to push the deceased into such a position that he committed suicide."

21. In Sanju vs. State of M.P. case reported in 2002 (5) SCC 371 the Hon'ble Supreme Court has held as follows:

"Even if we accept the prosecution story that the appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of "instigation". The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mensrea, 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 mensrea. It is in a fit of anger and emotion."

22. Keeping the above principle in mind now we have to consider whether the prosecution has proved that the appellant had instigated the deceased to commit suicide. The admitted facts are that the deceased and the accused are brothers and there was a longstanding enmity between them, criminal cases are also pending against them and both of them were on bail. According to P.W.1, the wife of the deceased, on the date of occurrence in the morning, there was a quarrel between the accused and the deceased. At that time, the accused went to the police station to sign in the register complying the bail condition, and he abused the deceased while the deceased going to the police station. Then P.W.1 along with children went there, while they were coming back at Pennadam, the accused scolded him and asked him to consume poison and die. But, in the complaint (Ex.P.1) she has stated that the occurrence had taken place while they went near police station. Apart from that P.W.4, another closely related witness of P.W.1 has also stated that the deceased had complained her that the accused was harassing the deceased. They are the only witness to support the case of the prosecution. From their evidence, we have to consider whether the prosecution has proved that the appellant/accused has mensrea and he has intentionally committed or goading the commission of suicide by the deceased. It is well settled law that mere casual remark, something said in routine and usual conversation cannot be construed or misunderstood as abetment. Abetment involves a mental process of instigating a person or intentionally leading a person in doing a thing without a positive act and out of which the accused instigate or aid in committing suicide, otherwise the conviction under Section 306 IPC cannot be sustained.

23. But in the instant case, admittedly, there was a quarrel between the deceased and the accused and during the quarrel, he said to have used some words and from that it cannot be construed that the appellant has mensrea to commit that offence, and he intentionally aided the deceased to commit suicide. The Court below without considering the evidence in proper perspective has convicted the appellant. In the above circumstances, considering the entire materials, I am of the considered view that the prosecution has failed to prove the charge under Section 306 IPC and the Court below without considering the materials in proper perspective has erroneously convicted the accused. Hence, the accused are entitled for acquittal.

24. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused in S.C.No.300 of 2007 dated 20.04.2009, are set aside and the appellant/accused is acquitted from all

the charges. Bail bond, if any, executed by the appellant/accused, shall stand cancelled. Fine amount, if any, paid by him is directed to be refunded.

mrp

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Munsif cum Judicial Magistrate
Tittakudi
- 2.-do-thro The Chief Judicial Magistrate, Cuddalore
3. The Additional District and Sessions Judge,
Fast Track Court NO.III,
Virudhachalam,
Cuddalore District.
- 4.-do-thro Principal Sessions Judge, Cuddalore
- 5.The Inspector of POLice
Pennadam Police Station,
Cuddalore
- 6.The Superintendent
Central Prison,
Cuddalore
- 7.The District Collector
Cuddalore
- 8.The Director General of Police
Mylapore, Chennai 4
- 9.The Public Prosecutor
High Court, Madras.

Copy to:The Section Officer,
Criminal Section,
High Court, Madras

+lcc to Mr.GaneshRajan, Advocate Sr.No.88315

RSY(CO)
sm:7.6.2018

Cr1.A.No.120 of 2010