

Crl A.388 of 2009
Bail Slip

Rajan Kumar alias Rajan S/o.Krishnan Appellant in the above Criminal Appeal and Accused in SC No.28 of 2009 was directed to be released on bail by the order of this Hon'ble Court in MP No.1 of 2009 in Crl.A.No.388 of 2009, dated 21.07.2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.388 of 2009
and M.P.No.1 of 2009

Ranjan Kumar @ Ranjan ... Appellant/Accused

Vs

State rep. By
Inspector of Police,
Pallikonda Circle,
Pallikonda, Vellore District. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment of conviction and sentence dated 29.06.2009 and made in S.C.No.28/2009 on the file of the Additional District and Sessions Judge, (Fast Track Court) Vellore, convicting the Appellant u/s.306 IPC and sentencing him to undergo 10 years R.I.

For Appellant : Mr. G.Vinodh Kumar

For Respondent : Mr.R.Sekar
Govt. Adv. (Crl. Side)

JUDGEMENT

The sole accused in S.C.No.28 of 2009 on the file of the Additional District and Sessions Judge, (Fast Track Court) Vellore, is the appellant herein. He stood charged for an offence under Section 306 IPC. The trial Court convicted the accused/appellant under Section 306 IPC and sentenced him to undergo Rigorous Imprisonment for 10 years and also to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for 6 months. Challenging the above said conviction and sentence, the appellant is before this Court with this Appeal.

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

The deceased in this case, one Siva @ Sivanandam, was a fortune teller, and constructed a temple at Pallikonda in Vellore District and settled there. The accused/appellant in this case was running a textile shop at Pallikonda. On 02.06.2008, two ladies said to have been sent by the deceased, purchased some textiles from shop of the appellant, and they also took his two wheeler, but they failed to pay the bill.

3. In the above circumstances, the accused/appellant demanded a sum of Rs.1,00,000/- (Rupees One Lakh) from the deceased for the purchase of textile and his two wheeler taken by the two ladies. When the deceased failed to pay the amount, the accused scolded him in a filthy language. Feeling insulted by the accused, the deceased committed suicide on 08.06.2008 at about 8.30 a.m. P.W.1, the brother of the deceased, after coming to know about the death, had filed a complaint before the respondent police alleging suspicion over the death of his brother, and based on the above complaint. P.W.13, Inspector of Police, registered a case in Crime No.254 of 2008 under Section 174 Cr.P.C and he prepared the First Information Report (Ex.P.12). Then Inspector of Police took up the case for investigation and proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P.5) and Rough Sketch (Ex.P.13). He has also seized the Diary (M.O.2) belongs to the deceased. Then, he conducted inquest over the dead body of the deceased in the presence of Panchayadars and prepared Inquest Report (Ex.P.11) and he sent the dead body for Postmortem along with a memo, and recorded the statements of the witnesses.

4. P.W.12, Doctor, working in the Government Hospital, Vellore, has conducted postmortem autopsy on the dead body of the deceased, and found the following injuries:-

" On front of the neck, the ligature marks were 6cm above the suprasternal notch, 8cm below the lower surface of symphysis menti, 3cm in width. On the left side of neck 2cm below the left angle of mandible, 2cm in width. On the right side neck, behind the right mastoid prominence, 2cm in width. On the back of the neck, the ligature marks merges with hairline and the ligature marks merges with hairline and the ligature marks were not seen for a length of 6cm from left angle of mandible upto hairline.

The margins of the ligature marks were intermittently bruised and abraded. On dissection, the tissues underlying the ligature marks were pale. Mucosa of the larynx were

congested and intact. All vital midline structures of neck were intact. NAD. No other external or internal or bony injuries were seen anywhere on the body."

Ex.P.10 is the Postmortem certificate and the Doctor gave the opinion that the deceased appeared to have died of Asphyxia due to hanging. P.W.13, Inspector of Police, recorded the statements of other witnesses, and on 30.06.2008, seized a suicide note written by the deceased. Based on the suicide note, he altered the FIR under Section 306 IPC, the alteration report is Ex.P.6. Then, he arrested the accused and remanded him to judicial custody. He sent the suicide note along with the admitted signature of the deceased for opinion of the handwriting expert. After completion of investigation, he laid charge sheet.

5. Considering the above materials, the trial Court framed charge against the appellant/accused under Section 306 IPC and in order to prove its case, on the side of the prosecution, as many as 13 witnesses were examined, 17 documents were exhibited, and 15 material objects were marked.

6. Out of the witnesses examined, P.W.1 is the brother of the deceased, he lodged a complaint before the respondent police. P.W.2, a relative of the deceased, has spoken about the recovery of suicide note on 30.06.2008. P.W.3 is a person known to the deceased. According to her, on 07.06.2008, the deceased came to her house and stated that since he has not repaid the amount to the textile shop, the accused/appellant scolded him in a filthy language and he was called by the police to appear before the police station for the purpose of enquiry. In the next morning, the deceased committed suicide. P.W.4 is the wife of the deceased and she is living separately. According to her, after she came to know about the death, she went to Pallikonda only thereafter, she knew that the deceased committed suicide. P.W.5 attested the Rough Sketch and recovery of M.O.1 and also recovery of the letter(Ex.P.2). P.Ws.6,7 and 8 turned hostile. P.W.9 attested the confession of the accused, P.W.10, spoke about the recovery of Diary(Ex.P.3) and other letters. P.W.11 is the Photographer, who took photographs of the dead body. P.W.12 is the Doctor, who conducted the postmortem and prepared Postmortem Report (Ex.P.10). P.W.13, Inspector of Police, who registered a complaint, conducted the investigation and recorded the statement, and after completion of investigation, he laid a final report.

7. 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 marked any documents.

8. Considering all those materials, the trial Court convicted the appellant and now challenging the above said conviction and sentence, the appellant has filed the present appeal.

9. I have heard Mr.Vinodh Kumar, learned counsel appearing for the appellant and Mr.R.Sekar, learned Government Advocate (Crl.Side) appearing for the State and also perused the records carefully.

10. The learned counsel appearing for the appellant submitted that absolutely, there is no evidence available on record to show that the appellant has abetted the deceased to commit suicide. The prosecution has mainly relied upon the alleged suicide note of the deceased, but the suicide note does not make out any case against the appellant. Even though the suicide note has been sent to hand writing expert, the prosecution deliberately failed to mark the Forensic Expert Report. Hence, the prosecution failed to prove that the suicide note was written by the deceased. P.W.2 stated that only after 22 days of the occurrence, the letter(Ex.P.2) was found near the pedestal, and P.W.3, in her evidence, deposed that the deceased has been abused for not repaying the amount to the textile shop, even assuming, it is true it does not amount to abetment. Without considering the material evidence in proper perspective, the trial Court erroneously convicted the appellant/accused.

11. Per contra, the learned Government Advocate appearing for the respondent has submitted that in the suicide note (Ex.P.2) written by the deceased, he has stated that the appellant is instrumental for his death. P.W.2 has clearly stated that the above suicide note has been recovered from the temple. P.W.3, the other witness, stated that the deceased told them that the accused abused him for non-payment of dues to him and he was totally upset, due to which, the deceased committed suicide. Considering all these materials, the trial Court rightly convicted the appellant and there is no illegality in the judgment of the Court below.

12. I have considered rival submissions and perused the records carefully. The prosecution mainly relied upon the suicide note Ex.P.2, said to have been written by the deceased. On a perusal of the suicide note, it is only mentioned that somebody has abused the deceased and action has to be taken against that person and appellant is responsible for his death. The above suicide note is written in the letter pad of the "Kovil Poosarigal Association". Even though the deceased committed suicide on 08.06.2008, the said suicide note said to have been recovered only on 30.06.2008, after 22 days. Even though P.W.13, the Investigating Officer has stated that the

above suicide note along with the admitted signature, was sent to hand writing expert for opinion, the expert opinion was not marked before the Court below. The prosecution also did not produce any witness to establish that the signature found in the suicide note is that of the deceased.

13. Apart from that, even considering the suicide note, there is nothing to show that the appellant has abetted the deceased to commit suicide. From the above suicide note it cannot come to a conclusion that the accused had abetted the deceased to commit suicide.

14. Section 306 IPC prescribes the punishment for abetment of suicide, which 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 the suicidal death and abetment thereof. Section 107 IPC defines "abetment" and 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.

15. 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 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."

15. Keeping the above principles in mind, if we consider the instant case that there is no material available to prove that this accused/appellant has abetted the deceased to commit suicide. Only P.W.3 above has spoken, that the deceased told her that he has been abused for non payment of the dues to the textile shop. Even assuming that the appellant abused the deceased for non-payment of amount it will not attract an offence under Section 306 IPC.

16. In the above circumstances, this court is of a considered view that the prosecution has failed to prove that the deceased has committed suicide due to the abetment of the accused. Hence, the accused is entitled to be acquitted. Without considering all the above materials in proper perspective, the trial Court erroneously convicted the accused. Hence the impugned judgment of the Court below is liable to be set aside.

In the result, the Criminal Appeal is allowed and the judgment of the court below is set aside and the appellant/accused is acquitted of the charge. Fine amount, if any, paid by him shall be refunded to him. Bail bond, if any executed by him, shall stand cancelled. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-vi)

//True Copy//

Sub Assistant Registrar

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To

- 1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
(FAST TRACK COURT) VELLORE.
- 2 THE JAIL SUPERINTENDENT, CENTRAL PRISON, VELLORE.
- 3 THE JUDICIAL MAGISTRATE V, VELLORE,
- 4 THE PRINCIPAL DISTRICT JUDGE, VELLORE.
- 5 THE DISTRICT COLLECTOR VELLORE
- 6 THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI.
- 7 THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

+1cc to Mr.K.SRINIVASAN, Advocate, S.R.No. 79374

CrI.A.No.388 of 2009

GMI (CO)
TR(09/04/2018)