

BAIL SLIP

The appellants 1 and 2 / accused 1 & 2 viz (1) Jayanthi @ Karolina, W/o. Udayakumar and (2) Ranjith Kumar, S/o.Udayakumar were directed to be released on bail as per order of this Court dated 11.09.2009 made in MP.1/09 in CrI.A.No.540 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.540 of 2009

1. Jayanthi @ Karolina

2. Ranjithkumar

.. Appellants

Vs

The Inspector of Police,
N-1 Royapuram Police Station,
Chennai - 600 013

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed on them by the learned Sessions Judge, Magalir Neethimandram, Chennai, by judgment dated 12.08.2009 in S.C.No.87 of 2008.

For Appellants : Mr.T.P.Sekar

For Respondent : Mrs.M.F.Shabana,
Gov. Adv. (CrI. Side)

JUDGEMENT

A1 and A2 in S.C.No.87 of 2008 in S.C.No.87 of 2008 on the file of the Magalir Neethimandram, Chennai, are the appellants herein. They stood charged for an offence under Section 306 IPC. By judgment, dated 12.08.2009, the trial court

convicted both the accused under Section 306 IPC and sentenced them to undergo rigorous imprisonment for 5 years each and also to pay a fine of Rs.5000/- each, in default to undergo simple imprisonment for 6 months. Challenging the above said conviction and sentence, the appellants/accused are before this Court with this Criminal Appeal.

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

The deceased, in this case, one Ramana, is the wife of P.W.1. The appellants are their neighbours. The deceased and A1 belong to one political party, A2 is the son of A1. The deceased and A1 used to attend party functions together, A2 being son of A1 also used to accompany them. Subsequently, A1 had a suspicion that the deceased have an illicit intimacy with A2. Hence, there were quarrel between them. On 28.06.2007 at about 7.30 a.m., both the accused were sitting in front of their house, and A1 scolded the deceased saying that she is having illicit intimacy with A2 and asked her to commit suicide, on seeing that, P.W.1, the husband of the deceased intervened and questioned A1, at that time, A2 also scolded the deceased and asked her to go and die. Subsequently, at about 9.15 a.m, the deceased went inside the house, poured kerosene and set fire on herself, and died on the spot. At about 10.30 a.m., PW.1, came to his house, and after coming to know about the death of his wife, immediately lodged a complaint(Ex.P.1) before the respondent police.

3. P.W.9, Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.263 of 2007 for an offence under Section 306 IPC and prepared a First Information Report (Ex.P.5) and then, he proceeded to the scene of occurrence, prepared an Observation Mahazar (Ex.P.2) and drew a Rough Sketch (Ex.P.6) in the presence of the witnesses. He also seized a plastic can (M.O.1) under the cover of mahazar(Ex.P.3). Thereafter, he recorded the statements of the witnesses and at about 11.30 a.m., he conducted inquest on the dead body of the deceased in the presence of the panchayathars and prepared Inquest Report (Ex.P.6). On the same day, at about 1.30 p.m., at West Madha Kovil street, P.C.Press Road junction, P.W.9 arrested both the accused and he sent a memo to the hospital for conducting autopsy on the dead body of the deceased.

4. P.W.8, Doctor, working in the Government Medical College Hospital, Chennai, on 29.06.2007, at 11.40 a.m., conducted postmortem on the dead body of the deceased and found the following injuries:-

" Epidermal, dermo-epidermal, deep burns

with wide areas of charring and derudement of cuticle exposing the rabcuticular hyperemic areas of the scalp, face, neck, chest, abdomen, genitalia, front and back of both UL & LL including robe. No other mechanical injuries anywhere else on the body."

Ex.P.4 is the postmortem certificate.

5. Then, P.W.9 recorded the statements of the Doctor, who conducted postmortem on the dead body of the deceased and on completion of investigation, he laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 9 witnesses were examined and 7 documents were exhibited, besides one material object was marked.

7. Out of the witness examined, P.W.1 is the husband of the deceased. According to him, both A1 and the deceased were members in a political party and they used to go to the party functions together, A2 also used to accompany them. His further evidence is that A1 had some suspicion, that the deceased was having illicit intimacy with A2, hence there were frequent quarrel between them. On the date of occurrence, at about 7.30 a.m., both A1 and A2 were sitting in front of their house, A1 scolded the deceased that she is having illicit intimacy with A2, and asked her to go and die. When, P.W.1 intervened and questioned A2 also scolded the deceased to go and die. Subsequently, she committed suicide.

8. P.W.2 is the daughter of the deceased. According to her, on the date of occurrence, in the morning A1 scolded the deceased that she is having illicit intimacy with A2 and asked her to die and A1 also told that if the deceased failed to commit suicide, they will murder her. Then, the deceased went inside the house and asked P.W.2 and her brother to go outside the house and committed suicide. P.W.3 is the sister of P.W.1. She is also an eye-witness to the occurrence. According to her, there was a quarrel between A1 and the deceased and at that time, A2 asked the deceased to pour kerosene and commit suicide or hang herself. At that time A1 also scolded the deceased, she pacified all the parties.

9. P.W.4 is the neighbour of the deceased. He was also present during the quarrel between the accused and the deceased. During the quarrel, A1 scolded the deceased with filthy language

and asked her to commit suicide, otherwise, they will murder her. At that time P.W.1 was also there and asked A1 to control her son A2, and that time A2 also scolded the deceased to commit suicide. P.W.5 is also a neighbour and he is also an eye-witness to the quarrel. According to her, A1 asked her to die, otherwise they will pour kerosene on her.

10. P.W.6 is the brother-in-law of P.W.1. According to him A2 alone scolded the deceased to commit suicide. P.W.7 is a witness to the observation mahazar and seizure of M.O.1 Can. P.W.8, Doctor, working in the Government Medical College Hospital, Chennai, conducted autopsy on the dead body of the deceased and gave postmortem certificate. PW.9, Inspector of Police, conducted investigation, arrested the accused and recorded the statements of the witnesses and on completion of investigation, he laid charge sheet against the accused.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not examine any witness or marked any documents on their side.

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

13. We have heard Mr.T.P.Sekar, learned counsel appearing for the appellants and Mrs.M.F.Shabona, learned Gov.Adv. (Crl.Side) appearing for the State and also perused the records carefully.

14. There are 6 eye-witnesses to the quarrel between the accused and the deceased before the occurrence. P.W.1 is the husband and P.W.2 is the daughter of the deceased and P.W.3 is the sister of P.W.1. P.W.4 and P.W.5 are neighbours, who are the independent witnesses and P.W.6 is the brother-in-law of P.W.1.

15. It is the consistent evidence of all the witnesses that the deceased and A1 were members of a political party and they used to go together for various party functions and A2 also used to accompany them. Later, A1 developed a suspicion against the deceased that she is having an illicit intimacy with A2 and there were frequent quarrel between A1 and the deceased. On the date of occurrence, at about 7.30 a.m., there was a quarrel between the deceased and the accused. It is the evidence of P.W.1 that during the quarrel, A1 scolded her and asked her to

commit suicide and when P.W.1 questioned A1, A2 also scolded the deceased and asked her to commit suicide. P.W.2, daughter of the deceased has deposed that A1 scolded the deceased and she did not say anything about A2. P.W.3 deposed that both A1 and A2 scolded her and asked her to commit suicide. According to P.W.4 only A1 scolded her and she has also stated that A1 told her that if she failed to commit suicide they will pour kerosene and set fire on her. According to P.W.5, A1 and A2 scolded the deceased and they told her that if they failed to commit suicide, they will set fire on her. According to P.W.6, A1 asked the deceased why she is spoiling her son and at that time P.W.1, husband of the deceased intervened and he scolded her that he is only spoiling his wife and then, A2 also joined the quarrel and asked the deceased to commit suicide.

16. P.W.9, Investigating Officer, in his cross examination has stated that during investigation P.Ws.3, 4 and 5 did not say that A1 and A2 scolded the deceased to commit suicide, otherwise they would set fire on her and it is only improved version during the trial. Apart from that there are lot of contradictions between P.Ws.1 to 5, regarding the actual words used by A1 and A2 and whether A1 alone scolded or A2 also scolded the deceased along with A1.

17. That apart, now this Court has to consider whether the Act of the accused would amount to abetment leading the deceased for committing suicide. Section 306 IPC prescribed 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 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.

18. 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."

19. In the light of the above judgments, this court has to consider whether the prosecution has proved that the accused had any mens rea to commit the offence, whether the act of the accused leads to the deceased to commit suicide, and their act intended to abet the deceased to take such a decision to commit suicide. From the evidence of the prosecution witnesses, it could be seen that both A1 and the deceased belong to a same political party, subsequently, due to some suspicion on the conduct of the deceased, there was a quarrel between A1 and the deceased. During the quarrel, the accused uttered some words and at any rate, it cannot be held that those utterance instigated the deceased to commit suicide and also compelled the deceased to commit suicide and the prosecution also failed to prove that there was a mens rea on the part of the accused to commit the offence. Merely because the accused asked the deceased to commit suicide, it cannot be taken as the accused uttered with mens rea.

20. In a case reported in 2002(5) SCC 371 (Sanju vs. State of M.P.) 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."

In the above circumstances, the prosecution has failed to prove that the deceased has committed suicide due to the abetment of the accused. Hence, the accused are entitled for acquittal.

21. In the result, the appeal is allowed and the conviction and sentence imposed on the appellants in S.C.No.87 of 2008 are set aside and the appellants/accused are acquitted

of the charge. The bail bond, if any, executed by the appellants/accused shall stand cancelled. The fine amount, if any, paid by appellants/accused shall be refunded to them.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Sessions Judge,
Magalir Neethimandram, Chennai,
2. -do- Thro' Principal Sessions Judge,
Chennai.
3. The Metropolitan Magistrate No.XVI,
George Town, Chennai.
4. The Chief Metropolitan Magistrate,
Egmore, Chennai.
5. The Superintendent,
Central Prison,
Puzhal, Chennai.
6. The Inspector of Police,
N-1 Royapuram Police Station,
Chennai - 600 013
7. The Public Prosecutor,
High Court, Madras.
8. The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.T.P.Sekar, Advocate, S.R.No.12726

CrI.A.No.540 of 2009

VD(CO)
CS/13/07/17