

Bail Slip

The appellant herein/Accused viz., Thomas S/o.Pangiraj was directed to the released on bail as per order of this court, dated 22.04.2008 in MP.1/2018 in CrI.A.No.299/2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.299 of 2008

Thomas .. Appellant/Accused

Vs

State rep. By
Deputy Superintendent of police,
Attur circle,
Gengavalli Police Station,
Salem District.
Crime No.47/2006

.. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the order of conviction and sentence passed by the Mahalir Neethimandram, Salem, in S.C.No.166 of 2007 on 20.03.2008.

For Appellant : Mr. A.Padmanabhan

For Respondent : Mr.R.Sekar,
Government Advocate

JUDGEMENT

The sole accused in S.C.No.166 of 2007, on the file of the Mahalir Neethimandram, Salem, is the appellant herein. He stood charged for the offences under Sections 498-A and 306 IPC. By judgment, dated 20.03.2008, the trial Court convicted the appellant under Section 498-A IPC, and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/--, in default, to undergo rigorous imprisonment for 3 months and convicted him under Section 306 IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine

of Rs.1000/-, in default, to undergo rigorous imprisonment for 3 months and the trial Court ordered the sentences to run concurrently. Challenging the 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 Rosemary is the wife of the appellant/accused. The marriage between the accused and the deceased took place 5 months prior to the occurrence. After the marriage, suspecting the fidelity of the deceased as she is having a illicit intimacy with one Kaliyamoorthy, who was her former lover, the accused used to harass the deceased and had beaten her frequently. Unable to bear the cruelty, the deceased fell into a well belonging to one Karuppan on 11.02.2006 and committed suicide. P.W.1, a V.A.O., on coming to know about the fact that a body was floating in a well, he rushed to the scene of occurrence and lifted the body from the well and he has given a complaint(Ex.P.1) before the respondent police.

3. P.W.11, Sub-Inspector of Police, who was working in the respondent police, on receipt of the complaint, registered a case in Crime No.47 of 2006, under Section 174 Cr.P.C. and prepared a First Information Report (Ex.P.10). Then, he sent the First Information Report to the higher officials and also to the Revenue Divisional Officer, Attur. Since the deceased died within a period for 7 years from the date of marriage. P.W.10, the Revenue Divisional Officer, conducted inquest over the dead body of the deceased in the presence of the panchayathars and given a report stating that the deceased committed suicide because the accused suspected her fidelity that she is having illicit intimacy with another person, the Inquest Report is Ex.P.8 and he also conducted enquiry and filed a report (Ex.P.9). Then, the body was sent for postmortem/ autopsy.

4. P.W.9, Doctor, working in the Government Mohan Kumara Mangalam Medical College Hospital, Salem, on 12.02.2006, conducted postmortem/autopsy on the dead body of the deceased and found the following injuries :

" Fish bite mark present over the eyebrows, eyelashes, around the mouth genitalia region and piuna of the ears (Postmortem injuries.
Sign of Decomposition : Greenish black discolorisation with peeling of the cuticles and bleb formation present, eye bulged, tongue protruded out, hairs loosened, maggots crawling all over the

body, washer women's hands and feets present, finger toe nail bed & found bruises . "

Ex.P.6 is the Postmortem certificate and he was of the opinion that the deceased died of asphyxia due to drowning.

5. Then P.W.12, Deputy Superintendent of Police, on receipt of the first Information report, commenced investigation, went to the scene of occurrence and prepared an Observation Mahazar (Ex.P.3) and drew a rough sketch (Ex.P.11) in the presence of the witnesses and recorded the statement of the witnesses and based on the investigation, he altered the charge into 306 IPC and sent the Alteration Report (Ex.P.12) to the jurisdiction Magistrate and handed over the case records to P.W.13, Inspector of Police, for further investigation. P.W.13, conducted further investigation, recorded the statement of the witnesses and arrested the accused. On such arrest, he has voluntarily given a confession (Ex.P.13), recorded the statement of the Doctor, who conducted postmortem on the dead body of the deceased and also the Revenue Divisional Officer and after completion of investigation, he filed the final report.

6. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 13 documents were exhibited.

7. Out of the witnesses examined, P.W.1 is the Village Administrative Officer. According to him, he found the body in a well, and lodged a complaint before the respondent police. P.W.2 is the mother of the deceased. According to her, 6 months prior to the occurrence, the deceased got married with the accused and the deceased used to tell her that there were frequent quarrel between the deceased and the accused. P.W.3 is the aunt of the deceased. According to her, the deceased used to complain that the accused suspecting her fidelity harassed her every day and she further stated that a day before the occurrence, the sister of the accused told her that the deceased was found missing and the accused shown a letter said to have been written by the paramour of the deceased. P.W.4 is closely related to the deceased. She had stated that the accused used to harass the deceased continuously and she further stated that on the date of occurrence, the accused was not in town, after he came back, he found the deceased missing and he enquired about her whereabouts to P.W.4. P.W.5, neighbour, turned hostile. P.W.6, owner of the well, where the body of the deceased was found, and he informed the Village Administrative Officer that a body was found floating in his well. P.W.7 is the witness to the Observation Mahazar. P.W.8 is the witness to the confession

of the accused. P.W.9, Doctor, conducted postmortem/autopsy on the dead body of the deceased and had given a postmortem report (Ex.P.6). P.W.10, Revenue Divisional Officer, conducted inquest on the dead body of the deceased in the presence of the panchayathars. P.W.11 is the Sub-Inspector of Police registered the complaint. P.W.12, Inspector of Police, commenced investigation, went to the scene of occurrence and prepared an Observation Mahazar and rough sketch and based on the investigation, he altered the case into 306 IPC and handed over the investigation to P.W.13. P.W.13, Inspector of Police, has spoken about the investigation done by him and filing of final report in this case.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. And he examined one Kulanthaisamy as defence witness. According to him, the deceased had a sexual relationship with one Kaliyamoorthy, and there was a quarrel between the deceased and Kaliyamoorthy, thereafter, the deceased married the appellant and he has also spoken about the illicit intimacy between the Kaliyamoorthy and the deceased.

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

10. We have heard Mr.A.Padmanabhan, learned counsel appearing for the appellant and Mr. R.Sekar, learned Government Advocate, appearing for the State and I have perused the records carefully.

11. The learned counsel appearing for the appellant would submit that absolutely there is no material available on record to convict the appellant either under Section 498-A or 306 IPC. Even the mother of the deceased, P.W.2 states that the deceased complained her that there were quarrel between the accused and the deceased. P.Ws.3 and 4, who are all distantly related to the accused, all interested witnesses and they have only stated that the appellant/accused harassed the deceased, but they were not examined by the Revenue Divisional Officer during the inquest or enquiry. Apart from that, absolutely, there is no other material available on record to show that the appellant has abetted the deceased to commit suicide. Even though while filing the alteration report, the appellant as well as the Kaliyamoorthy, who is the paramour of the deceased, were shown as accused, but, subsequently, the final report has been filed against the appellant alone, the prosecution has not given any explanation for dropping the said Kaliyamoorthy, which

also creates a doubt with the prosecution case. In the absence of any evidence to show that the accused has harassed the deceased and abetted the deceased to commit suicide, the trial Court erroneously convicted the appellant, and the judgment is perverse and hence, liable to be set aside.

12. Per contra, the learned Government Advocate, appearing for the appellant would contend that P.Ws.2,3 and 4 are all closely related to the deceased, had consistently stated that suspecting the fidelity of the deceased, the appellant/accused used to harass the deceased and unable to bear the cruelty, the deceased was driven to commit suicide. Even though P.Ws.2, 3 and 4 are closely related, they had stated that the accused had harassed the deceased and ultimately abetted her to commit suicide, thus, the prosecution has clearly established the guilt of the accused. The trial Court also considering all the evidences in proper perspective rightly convicted the appellant and there is no reason to interfere with the judgment of the trial Court.

13. I have considered the rival submissions and perused the materials available on record.

14. It is the admitted case of the prosecution and the appellant that the marriage between the deceased and the appellant took place 6 months prior to the occurrence. The case of the prosecution is that before the marriage, the deceased had a love affair with one Kaliyamoorthy, and suspecting the fidelity of the deceased, the appellant used to harass her and had beaten her, and unable to bear the cruelty, the deceased committed suicide. But, the evidence of P.W.2, the mother of the deceased, only says that the deceased after marriage used to come to her house and at that time, the deceased told her that there was quarrel between the accused and the deceased. Apart from that at the time of death, she was 3 months pregnant. From the testimony of P.W.2, absolutely there is no material to show that the appellant had harassed the deceased. P.W.3, who is the distantly related to the deceased, told that the deceased told her that the accused used to beat her regularly. P.W.4 is also distantly related and she has also stated that the appellant used to quarrel with the deceased and had beaten her. Except their evidence, absolutely there is no materials available on record to show that the appellant had abetted her to commit suicide.

15. Apart from that there are lot of contradictions in the evidence of P.W.2, P.W.3 and P.W.4. P.W.2, the mother of the deceased, has stated that after the marriage both the deceased and the accused used to visit her house and at that time, the deceased told her that there was a quarrel between the

deceased and the accused, apart from that there is no allegation of harassment. Even though P.Ws.3 and 4 had stated that the accused had harassed the deceased, in their cross examination they have clearly admitted that they had not made any complaint before the mediators or police regarding the harassment and they have also not given any statement before the police at the time of investigation under Section 161 Cr.P.C. and it is only improvement. In the above circumstances, since there are lot of contradictions in the evidence of P.Ws.2, 3 and 4, it is highly unsafe to rely upon the evidence of P.Ws.3 and 4 to convict the accused.

16. Based on the above evidence, now this Court has to consider whether the Act of the accused would amount to abetment leading the deceased for committing suicide.

17. 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 a 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 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 led the deceased to commit suicide, and his 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 due to some suspicion on the conduct of the deceased, there were quarrel between the accused and the deceased. 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 and 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."

21. In the above circumstances, I am of the considered view that the prosecution has failed to prove the charge against the accused beyond all reasonable doubt and the appellant is entitled for acquittal. The trial Court without considering the evidence in proper perspective, convicted the appellant, which is liable to be set aside.

22. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused are set aside. The appellant/accused is acquitted of the charges. The bail bond, if any executed by him shall stand cancelled.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Sessions Judge,
Magalir Neethimandram, Salem.

2.The Public Prosecutor,
High Court, Madras.

3.The Judicial Magistrate No.III,
Attur, salem District.

4.The Chief Judicial Magistrate,
Salem(For Information)

5.The Deputy Superintendent of police,
Attur circle,
Gengavalli Police Station,
Salem District.

Crl.A.No.299 of 2008

nr 14/03/2018



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