

Bail Slip.

The Appellant namely N. Prabhu, (sole Accused in S.C.No.13 of 2007) on the file of Assistant Sessions Judge, cum Chief Judicial Magistrate, Namakkal was released on bail vide order of this court dated 31.07.2008 made in M.P. No. 1/2008 in CrI.A.No.532 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.532 of 2008

N.Prabhu

... Appellant/Accused

Vs

State rep. By
Inspector of Police,
Rasipuram Police Station,
Namakkal District.
Cr.No.423 of 2005
Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to allow the appeal and set aside the conviction and sentence imposed on the appellant by judgment dated 26.06.2008 in S.C.No.13 of 2007 passed by the Assistant Sessions Judge cum Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.N.Premalatha

For Respondent : Mr. R.Sekar
Gov. Adv.

JUDGEMENT

The sole accused, in S.C.No.13 of 2007 on the file of Chief Judicial Magistrate, Namakkal, is the appellant herein. He stood charged for an offence under Section 306 IPC. By judgment dated 26.06.2008, the 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.2000/-, in default to undergo rigorous imprisonment for 6 months. 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 Chandralekha is the daughter of P.Ws.1 and 2 and when she was studying 12th standard, she had love affair with the accused, and the accused also promised to marry her. But, later, the accused got married to another girl. The deceased questioned the accused, but he told her that since the newly married girl is a rich girl, he decided to marry her, when she reminded him about the promise made to her, he asked her to marry somebody else. When the deceased persisting the accused, he told her that if only she die, he will settle in peace. In that circumstances, on 14.04.2005, the deceased poured kerosene on herself and set fire on her. Immediately, she was taken to Government Hospital, Rasipuram, from there, she was referred to Government Hospital, Salem, and she was admitted there.

3. Based on the intimation received from the hospital, P.W.13, Sub-Inspector of Police, proceeded to Government Hospital, Salem, where he recorded the statement of the deceased (Ex.P.1) and based on the same, he registered a case in Crime No.423 of 2005 for an offence under Section 309 IPC and prepared First Information Report (Ex.P.15). Then, he commenced investigation and recorded the statement of the witnesses and proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.16) and also recovered a plastic can (M.O.1).

4. In the meantime, based on the intimation received from the hospital, P.W.10, the Judicial Magistrate, No.V, Salem, proceeded to the hospital for recording her dying declaration and after being satisfied that the injured/deceased was conscious and in fit state of mind to give dying declaration, P.W.10 recorded the dying declaration of the deceased (Ex.P.12).

5. Thereafter, the deceased succumbed to injuries on 24.04.2005 and P.W.13 altered the First Information Report into 306 IPC and the alteration report is Ex.P.18. After that, he conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared Inquest Report (Ex.P.17) and then, he sent the dead body of the deceased for postmortem/autopsy.

6. P.W.9, Doctor, working in the Government Hospital, Salem, on 24.04.2005, at about 4.15 p.m., conducted autopsy on the dead body of the deceased, and found the following injuries:-

" Injuries : Superficial infected and deep burns

wound. The burnt wound area greenish yellow pus covering with foul smelling present.

Whole of face, front and sides back of neck both shoulder front of chest wall and abdomen both glutial region, both axillary region. Whole of back of trunk. Whole of front of both thighs both arms and forearmed both hands muscle fully burnt bones exposed toe nail found slush hair. Pubic hair are singed. Surgical IV cut down around present on left ankle. "

Ex.P.10 is the Postmortem certificate. He was of the opinion that the deceased appeared to have died of effects of burns.

7. P.W.14, Inspector of Police, attached to the respondent police station, continued the investigation and recorded the statement of the witnesses and handed over the investigation to P.W.15. P.W.15, Inspector of Police, recorded the statement of remaining witnesses and after completion of investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed a lone charge 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 15 witnesses were examined and 18 documents were exhibited, besides one material object.

9. Out of the witness examined, P.W.1, is the father of the deceased. According to him, on the date of occurrence, in the morning, while he was leaving home, the deceased told him that she had severe headache, and he advised her to take some medicine. Thereafter, at about 3.00 p.m., he received an information that the deceased poured kerosene and set fire on her, then, he took her to the Government Hospital, Rasipuram, from there to Government Hospital, Salem. There, the deceased had given statement to P.W.13, according to him, the deceased told her that she was in love with the accused and the accused also promised to marry her, subsequently, he got married to another girl, while she questioned the same, he abused him and asked her to die. P.W.2 is the mother of the deceased. According to her, his son P.W.3 told her that before the occurrence the deceased called the accused and when she questioned the accused, he told her to go and die. P.W.3 is the brother of the deceased. He is a minor witness. According to him, prior to the occurrence, the deceased told him to bring the accused, and while she questioned the accused about the marriage, he asked her to get married to somebody else and also told her that if only she dies he will get mental peace.

10. P.W.4 is closely related to the deceased, he only broke open the door and took the deceased out of the house, and took her to the hospital. P.W.5 is the witness to the

observation mahazar and recovery of M.O.1. plastic can. P.W.6 is the Doctor working in the Government Hospital, Rasipuram. According to him, the deceased was admitted to the hospital on 16.04.2002 at about 3.00 p.m. by her father, P.W.1. At that time, he told her that she poured kerosene and set fire on her and he issued Accident Register Ex.P.4 and referred her to Mohan Kumaramangalam Government Hospital, Salem. P.W.7 is the Doctor, working in the Mohan Kumara Mangalam Government Hospital, Salem. He has given a certificate at the time of recording dying declaration of the deceased by the Judicial Magistrate and he has stated that the deceased was conscious and in fit state of mind at the time of giving dying declaration. P.W.8 is the Doctor, working in the Mohan Kumara Mangalam Government Hospital, Salem and he has given death intimation (Ex.P.8) that the deceased died on 24.04.2005 at about 9.00 p.m. P.W.9, Doctor, who conducted autopsy on the dead body of the deceased and given postmortem certificate (Ex.P.10). P.W.10 is a Judicial Magistrate. He recorded the dying declaration of the deceased and the judicial dying declaration is marked as Ex.P.12. P.W.11 is the Doctor, who admitted the deceased in the Government Hospital, Salem, and at that time, she told her that she poured kerosene and set fire on her and found 70 percent of burn injuries and also sent a memo to the Judicial Magistrate for recording the dying declaration and also issued Accident Register (Ex.P.14). P.W.12, Head Constable, took the dead body of the deceased to Government Mohan Kumara Mangalam Medical College Hospital, Salem and identified the same for postmortem. P.W.13 is the Sub-Inspector of Police, who registered the complaint and conducted investigation and after death of the deceased, he altered the first Information Report into Section 306 IPC, and he has also conducted inquest on the dead body of the deceased, thereafter, he handed over the investigation to the Inspector of Police.

11. P.W.14, another Inspector of Police, conducted further investigation and recorded the statement of the Doctor and other witnesses and handed over the investigation to another Inspector of Police, P.W.15. P.W.15, continued the investigation and recorded the statement of remaining witnesses and after completion of 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 chose to examine any witness or mark any documents.

13. 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.

14. We have heard Mr.N.Premalatha, learned counsel appearing for the appellant and Mr.R.Sekar, learned Gov.Adv. (Crl.Side) appearing for the State and also perused the records carefully.

15. The learned counsel appearing for the appellant would contend that the deceased did not commit suicide because of the abetment caused by the appellant. In Ex.P.1 complaint, she did not say that the appellant has abused her or asked her to commit suicide. Subsequently, even in the dying declaration given before the Judicial Magistrate, she simply stated that the appellant/accused loved her and subsequently, he got married to another girl and hence, she committed suicide. Even though P.Ws.1, 2 and 3, father, mother and brother of the deceased had stated that before the death, the accused asked her to marry somebody else and he also asked her to die. But in the cross examination they have admitted that before the death, the deceased did not say anything about the meeting with the appellant.

16. P.W.3 is a minor witness, aged about 15 years, the Court below simply accepted his evidence for convicting the appellant. Even in his evidence also there is nothing to show that the appellant has abetted the deceased to commit suicide. The learned counsel further submitted that from the witnesses examined by the prosecution, absolutely, there is no material available to satisfy the ingredients of Section 306 IPC, and the trial Court without considering the evidence in proper perspective has erroneously convicted the appellant.

17. Per contra the learned Government Advocate appearing for the respondent would submit that there are 2 dying declarations by the deceased, first dying declaration is before P.W.13 Sub Inspector of Police, wherein she has clearly stated that she was in love with the appellant and he also promised to marry her. Thereafter, he got married to another girl only because of that she has committed suicide. In the judicial dying declaration also she has stated the same. Apart from that P.Ws.1, 2 and 3, parents and brother of the deceased also stated that before the occurrence, the appellant/accused had abused the deceased and told her that only if she dies he would be live in peace and asked her to die. All the above materials clearly prove that only the appellant abetted the deceased to commit suicide. Hence, the appellant is liable to be convicted under Section 306 IPC. The Court below considering the evidence in proper perspective rightly convicted the appellant.

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

carefully.

19. The appellant stood charged for an offence under Section 306 IPC. Now the question is whether the Act of the accused would amount to abetment, leading the deceased to commit suicide.

20. Section 306 IPC prescribed the punishment for abetment of suicide and it 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.

21. 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 commission of said suicide has been abetted by the accused. 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.

22. The Hon'ble Supreme Court of India in Gurcharan Singh /vs/ State of Punjab reported in (2017) 1 Supreme Court Cases 433, 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) , the Supreme Court has 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."

23. 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."

24. Keeping the above principles laid down by the

Hon'ble Supreme Court in mind, let us considered the evidence available on record. There are two dying declarations in this case. The first dying declaration was given by the deceased before P.W.13 Inspector of Police, in which, the deceased had only stated that she was in love with the appellant and he had also promised to marry her, thereafter, he got married to some other girl, because of the same, she was in depression and she does not want to live, hence, she poured kerosene on her own and set fire on her. Subsequently, she has also given a judicial dying declaration before P.W.10 Judicial Magistrate, No.V, Salem, wherein she has stated that the appellant loved her, later he cheated her, hence, she poured kerosene and set fire on her. Considering the above dying declaration, it is clear that only because of the love failure, the deceased had committed suicide. It is the evidence of P.W.1 to P.W.3, the parents and brother of the deceased, that the appellant only asked her to die. Even though P.Ws.1 and 2, in their chief examination had stated that before the occurrence, deceased asked P.W.3, their son, to bring the deceased to meet her, at that time, the deceased questioned the accused, but the appellant asked her to marry somebody else and also told that if only she dies he will live in peace, and only due to the same, she committed suicide, But, in their cross examination, P.Ws.1 and 2 clearly stated that while the deceased was admitted in the hospital, the deceased did not say anything about the love affair with the appellant and she did not say that the deceased met the accused before she committed suicide. P.W.3 is the brother of the deceased. He is aged about 15 years and minor. According to him, before the occurrence, the deceased asked him to bring the accused as she wants to meet him, and he also brought the accused, when she questioned the accused, he told her to marry another man or to commit suicide, then only he will live in peace. But in the cross examination he has admitted that till the death of the deceased, he did not inform the same to anybody. He is a minor witness, but the Court below without testing the competency of the minor to give evidence, straightaway recorded the evidence. But considering the evidence of P.Ws.1 and 2 that till death, the deceased did not tell anything about the love affair with the accused and she also did not say that she met the accused. In that circumstances, it is highly unsafe to convict the appellant based on the testimony of the minor witness.

23. Apart from that as already stated in both the dying declarations of the deceased, she did not mention anything about the accused, and he only abetted her to commit suicide. Even assuming that she was in love with the appellant and the appellant got married to another girl, it is only out of frustration, the deceased had committed suicide, and at any rate, it cannot be construed as an abetment on the part of the appellant, which lead the deceased to commit suicide.

24. In the above circumstances, I am of the considered view that the prosecution has miserably failed to prove the charge against the accused and hence, the appellant is entitled for acquittal.

25. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant are set aside and the accused is acquitted from the charge under Section 306 IPC. Bail bond, if any, executed by the accused, shall stand cancelled. Fine amount, if any, paid by him shall be refunded.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

mrp

To

1. The Assistant Judge cum Chief Judicial Magistrate
Namakkal.
2. The Judicial Magistrate
Rasipuram.
3. The Chief Judicial Magistrate
Namakkal.
4. The Inspector of Police
Rasipuram Police Station
Namakkal District.
5. The District Collector
Namakkal.
6. The Director General of Police
Mylapore.
7. The Public Prosecutor
High Court, Madras 104.

Copy to

The Section officer
Criminal Section, High Court, Madras 104.

Cr1.A.No.532 of 2008.

GJ(CO)

SP(18/06/2018)