

BAIL SLIP

Crl.A.No.872 OF 2008:

The Appellants/Accused namely Hidhayathulla(A1), Abdulmajith (died)(A2), and Rayhana Barveen(A3), were directed to be released on bail as per order of this court dated 20.01.2009 made in Crl.M.P.No 1 of 2008 in Crl.A.No.872 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07.03.2016
PRONOUNCED ON : 16.03.2017

CORAM :

THE HONOURABLE MR. JUSTICE B.GOKULDAS

Crl.A.No.872 of 2008
and Crl.MP.No.3517 of 2017

1. Hidhayathulla
 2. Abdulmajith (died)
 3. Rayhana Barveen
- .. Appellants/Accused 1 to 3

Vs.

The Inspector of Police,
All Women Police Station (Central)
Coimbatore.Respondent

PRAYER : Appeal is filed under Section 374(2) Criminal Procedure Code, to set aside the judgment made in SC.No.29 of 2007 dated 22.12.2008 passed by the Sessions Court, Magalir Neethimandram, Coimbatore and to acquit the appellants herein

For Appellants : Mr.S.Ananthanarayanan, SC
for MA.P.Thangavel.
For respondent : Mr.B.Ramesh Babu, GA (Crl.side).

J U D G M E N T

This Criminal appeal is directed to set aside the judgment made in SC.No.29 of 2007 dated 22.12.2008 on the file of the Sessions Court, Magalir Neethimandram, Coimbatore.

2. Heard the rival submissions made on both sides and perused the records.

3. The brief facts of the case are as follows :-

The marriage between the deceased and the first accused was solemnized on 12.07.2011 at Lakshmi Hall at Sathyamangalam as per Islamic Customs and conventions. The second accused is the father and the third accused is the sister of the first accused. After the marriage, all the accused and the deceased lived jointly at Coimbatore. The first accused sold and pledged some jewels and spent the money lavishly and also demanding more jewels from the deceased. During September 2004, PW1/father of the deceased visited his daughter at her house, at that time A2 and A3 instigated A1 to put up pressure on the deceased to demand 10 sovereigns of jewels from her father, failing which the accused persons jointly scolded the deceased, thereby caused mental agony. PW1 and PW2 insisted A1 and made arrangements to set up separate abode to enable A1 to fix a rented house, PW1 paid a sum of Rs.10,000/- on 13.09.2007 to meet the expenditure. A1 received the said amount and failed to do so, the deceased vexed with the behaviour of the accused, went to her parents house alongwith the children. On 23.11.2004, A1 set up a separate abode at Coimbatore for comfortable living at the rented house A1 demanded colour television, and one again demanded the accused to obtain Cellular phone and also borrowed cash from the in laws for obtaining the demands, the accused caused all sort of humiliation and cruelty to the deceased. A1 now and then shifted the residence frequently in order to meet the expenditure and insisted the deceased to bring money from her parents. At last, A1 rented the house at 4th street, Ganesh Layout, Coimbatore by creating difficult and hostile environment for the deceased. On 27.07.2005 at 3.30pm, the deceased committed suicide by hanging herself with M.O.1-Saree at the above said residence.

4. PW11/Vijayalakshmi, Sub Inspector of Police, All Women Police Station, Coimbatore received intimation at about 19.15hrs on 27.07.2005 from the Government hospital and went to Coimbatore Medical College at 19.45 hours and ascertained about the details of death and about the family details and returned to police station. On 28.07.2005 at 01.00hrs PW1.Kathirullah father of the deceased/Sugana Begam went to the police station and lodged Ex.P1 complaint stating about the cruelty caused by the accused and their abetment to commit suicide. Based on the complaint, PW11 registered a case in Cr.No.84 of 2005 under Sections 498A and 306 IPC and sent the same to the Judicial Magistrate, Coimbatore and copy of the same was forwarded to PW10/Revenue Divisional Officer, Coimbatore. On 28.07.2005 at 5.00hrs PW8/Dhanalakshmi, woman police constable received the post from PW11 and handed over to the PW10 and to the Judicial Magistrate. PW10/RDO who received the copy of complaint took up the same for investigation, in the course of inquiry to find out the apparent cause for the death went to Coimbatore Medical

College Hospital and conduct inquest over the dead body. The dead body of the deceased was identified by PW8. During the inquiry PW10 examined PW1 to PW3 and recorded the statement of Exs.P7 to P9 respectively. PW10 conducted inquest over the dead body in the presence of Mediators viz., Nagendran, John Joseph, Gowtham Kumar, Abdul Kadhar and Noor Mohammed and prepared Ex.P13/inquest report. PW10 also recorded Ex.P10/consolidated statement of the Mediators and sent Ex.P11/requisition to the Forensic Medicine Department, Coimbatore Medical College Hospital to conduct autopsy over the dead body of the deceased. Based on the requisition from PW10 for conducting autopsy PW9 Dr.Kuzhandivelu and Dr.K.Mallika, Tutors in Forensic Medicine Department, Coimbatore conducted postmortem at 12.45pm on 28.07.2005. After inquiry, PW10 formed an opinion that A1 to A3 are root cause for the death and they committed abetment and due to instigation the deceased committed suicide. Hence, PW10 sent Ex.P12 report to the Assistant Commissioner of Police with a requisition to find out the real cause for the death. On 29.07.2005 at 6.00hrs PW12 arrested A1 to A3 at their residence, after completing the formalities PW12 forwarded the accused to the Court for remand.

5. The trial Court placed the incriminating evidence before the accused under Section 313 of Cr.PC and the accused denied the same in toto. On the side of the defence, no oral evidence was examined and no documentary evidence was marked. After considering the oral and documentary evidence, the trial Court convicted the accused for the offences under Sections 498A and 306 IPC and sentenced them as stated above. Aggrieved over the same, the accused/appellants have preferred this appeal.

6.The learned counsel for the appellants submitted that the trial Court ought not to have believed the evidence of PW1 to PW3 who are interested witness and they are only hearsay in nature. PW1 is only the complainant and not the eyewitness, the versions of Exs.P7 to P.10 are different with each other. The appellants are convicted under Section 498A IPC and even though no offence was made out under Section 306 IPC, the trial Court wrongly pointed out that there was instigation or accomplice by the accused against the deceased. The trial Court rightly comes to the conclusion that the A1 returned back at 9.00pm on the said date of occurrence and the A2 and A3 are living away from the scene of occurrence and there is no possibility for instigation to commit any cruelty or abate to commit suicide. But, the trial Court failed to note that the prosecution failed to prove where the alleged cruelty has taken place, and also the time of such event and place of occurrence are long before the death of the deceased. As per the ingredients of Section 498A, the prosecution ought to have prove the case with documentary evidence. The trial Court wrongly appreciated the statement of PW10 and the evidence of PW1, who have stated that for the past

four years the accused caused cruelty to the deceased. There are contradictions in the statement of witnesses by PW5, PW6 and CW1. The said witnesses have also categorically stated that during the spot inspection conducted by the respondents police, the police seized the suicide note, and hence, the respondent police colluded with PW1 to PW3, has failed to produce the said suicide note taken from the house of the deceased as a document, which goes to the root of the prosecution case.

7. The main contention raised on the side of the appellants that soon before the death of the deceased some instigation or abetment would have been made by the accused, but the A1 went to workshop and returned back only at 9.00pm and A2 and A3 are residing faraway from the scene of occurrence. As per the evidence of PW2 and PW3 no whisper about the instigation or abetment by the accused to the deceased. Hence, the conviction and sentence passed by the trial Court under Section 306 IPC is not in accordance with the law and on justifiable reasons and the same has to be set aside. During the pendency of the appeal, A2/AbdulMajith died on 25.01.2013, hence, the charges levelled against A2 is dismissed as abated. The suicide note recovered by the respondent/police has not been filed as document and marked as exhibit before the trial Court, which goes to the root of the case.

8. The learned counsel for the appellant in support of his contentions relied on the following judgments :-

1. 2002 CrI.L.J. 2796 - Sanju @ Sanjay Singh Sengar v. State of MP.
2. (2010) 1 SCC 750 - Gangula Mohan Reddy v. State of Andhra Pradesh
3. (2014) 12 SCC 595 - Mangat Ram v. State of Haryana
4. Unreported judgment of the Hon'ble Supreme Court dated 11.08.2015 - Saloni Rupam Bhartiya v. Rupam Prahlad Bhartiya and others.
5. 2010 (20) MWN (Cr.) 371 - Selvaguru v. State rep by Assistant Commissioner of Police.
6. Indian Kanoon - <http://indiankanoon.org/doc/1907900> - judgment of the this Court dated 28.07.2009 - N.Anjali Devi and another v. State by Superintendent of Police, Villupuram.

This Court has no quarrel with the judgment cited on the side of the appellants.

9. During the course of arguments, the PW2 and PW3 have filed a petition in CrI.MP.No.3517 of 2017 to compound the offence by permitting the petitioners to compound the offence and acquit the appellants/accused 1 and 3 in CrI.A.No.872 of 2008. The petitioners are personally appeared before this Court

and orally enquired on 07.03.2017. The petitioners have stated that the petitioners and the accused 1 and 3 are close relatives and seeks to compound the offence, by showing mercy to the two minor children, and prays before this Court to acquit the appellants, enabling them to look after the future of the minor children. The first appellant agreed to take care of the elder son and the petitioners being the grandmother and uncle, undertakes to take care of the younger son. The above said statement made by the petitioners are recorded and they have filed an affidavit to that effect.

10. The petitioners/PW2 and PW3 in CrI.MP.No.3517 of 2017 have not stated anything about the ingredients of the penal section 306 IPC. The abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing, without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained. There has to be a clear mensrea to commit the offence and also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he/she commits suicide. If a victim commits suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances of an individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty. In the above circumstances of the case, none of the ingredients of offence under Section 306 have been made out and the appellant's conviction are held unsustainable.

11. Considering the facts and circumstances of the case on hand and the relationship between the petitioners in CrI.MP.No.3517 of 2017 and the accused, this Court is inclined to allow the CrI.MP.No.3517 of 2017.

12. In the result, the criminal appeal is allowed, in view of compounding the offences against the appellants, the appellants/accused, herein are acquitted from all the charges. The bail bond if any, executed by the accused shall stand cancelled and the fine amount, if any, paid by the accused shall be refunded to them.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No II, Coimbatore
 2. The Chief Judicial Magistrate, Coimbatore
 3. The Sessions Court, Magalir Neethimandram, Coimbatore.
 4. The Superintendent, Central Prison, coimbatore
 5. The Superintendent, Central Prison(Women wing)
Vellore
 6. The Inspector of Police
All Women Police Station(Central)
Coimbatore District
 7. The Section Officer
Criminal Section Record
High Court, Madras
 8. The Public Prosecutor, High Court, Madras.
- +1 CC to Mr. MA.P.Thangavel, Advocate sr 16488

EV(CO)
sp/4/4

CrI.A.No.872 of 2008

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