



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.09.2017

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

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CrI.A(MD)No.370 of 2017
and
CrI.M.P. (MD) .No.6776 of 2017

Seenivasan

... Appellant/Accused

VS.

The State rep by
The Inspector of Police,
Palani Town Police Station,
Dindigul.
(Crime No.733/2007)

... Respondent/Respondent

Criminal Appeal filed under Section 374 Cr.P.C., against the judgment of conviction dated 31.03.2016 made in S.C.No.238 of 2010 on the file of the Mahila Court (Mahila Fast Track Court), Dindigul for the offence under Section 306 IPC and sentencing the petitioner for 3 years simple imprisonment with a fine of Rs.2,000/-, in default, to pay the fine, imposed six months simple imprisonment on the petitioner.

For Appellant : Mr.Chellapandian
Senior Counsel

For Respondent :Mr.C.Mayilvahana Rajendran
Additional Public prosecutor

JUDGMENT

The sole accused in Sessions Case No.238 of 2010 on the file of the Mahila Court (Mahila Fast Track Court), Dindigul, is the appellant herein. He stood charged for the offence under Section 306 IPC. The trial Court convicted the appellant and sentenced him to undergo three years simple imprisonment and imposed a fine of Rs.2,000/- in default, to undergo six months simple imprisonment. Challenging the same, the present Criminal Appeal has been filed.

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

(i)The deceased in this case is daughter of P.W1. The deceased was learning Yoga from the accused and the deceased fall in love with the accused and the accused also promised to marry her, subsequently, the accused refused to marry her, hence, there was a wordy quarrel arose between them on 04.09.2007. Thereafter, on



06.09.2007 at about 7.00 a.m., the deceased poured kerosene and set fire on her own in her house. Immediately, she was taken to Palani Government, Hospital where, the deceased succumbed to burn injuries at about 4.00 p.m.; thereafter, P.W1, the mother of the deceased, gave a complaint before the respondent police.

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(ii) PW10, Inspector of Police, after receipt of the complaint, registered a case in Crime No.733 of 2007, under Section 174 Cr.P.C., Ex.P5 is the printed First Information Report, and the Inspector of Police, P.W.10, commenced the investigation, went to the scene of occurrence, where he prepared the observation mahazer (Ex.P.6), rough sketch (Ex.P.7). Then he conducted inquest in the Government Hospital in the presence of witnesses and the Panchayadhars and prepared inquest report Ex.P.8. Then he sent the body for post-mortem and P.W.8, Doctor, who is working in Palani Government Hospital, conducted the post-mortem/autopsy and gave a post-mortem report, Ex.P.2 and he opined that the deceased appeared to have died of shock due to excessive burn injuries and handed over investigation to P.W.9.

(iii) PW.10 continued the investigation, altered the First Information Report into 306 IPC, Alteration report is Ex.P.4, recorded the statement of doctor and other witnesses and after completing investigation, filed a final report.

3. Considering the above materials, the trial Court has framed charge against the appellants under Section 306 IPC and the accused denied the same. On the side of the prosecution, in order to prove its case, as many as 10 witnesses were examined and 8 documents were exhibited and no material objects were marked.

4. Out of the witnesses examined, P.W.1 is the mother of the deceased, according to her, both the deceased and the accused loved each other and the accused also promised to marry the deceased. In this regard, the accused went to the house of the deceased and asked P.W.1 get her daughter married to him. But, P.W1 and other family members of the deceased asked the accused to wait for some time. Thereafter, in order to avoid meeting the accused, P.W.1 shifted the house. Subsequently, there was a wordy quarrel arose between the deceased and the accused near a railway gate petty shop, and the accused abused the deceased in filthy language. On 04.09.2007 at about 6.30 a.m., in front of the accused house, the deceased compelled the accused to marry her, at that time, a wordy quarrel arose between them. On 06.09.2007, at about 7.00 a.m., the deceased poured kerosene and set fire on her own.

5. P.W.2, brother of the deceased, according to him, both the deceased and the accused loved each other and the accused is willing to marry the deceased, but the family members of the deceased informed the accused that they can conduct the marriage only after six months, and on 04.09.2007, there was a wordy quarrel between the deceased and the accused and due to which, the accused abused the deceased in filthy language and thereafter, on 06.09.2007, she



6. P.W.3, neighbour, who has admitted the deceased in the Hospital. P.W.4, spoke about the quarrel between the accused and the deceased on 04.09.2007 and the deceased, told the accused that if he refused to marry her she will commit suicide. P.W.5, sister of the deceased, according to her, the accused promised to marry the deceased and thereafter, he refused and hence, being frustrated she committed suicide, she also deposed regarding the admission of the deceased in the hospital and a dying declaration given by her before the learned Judicial Magistrate.

7.P.W.6, friend of the deceased and according to him, both the deceased and the accused loved each other and the accused refused to marry her, hence she committed suicide. P.W7, is a neighbour of the deceased and his evidence has no substance. P.W8, Doctor, who conducted post-mortem/ autopsy and gave a report Ex.P.2 stating that due to burn injuries, the deceased died.

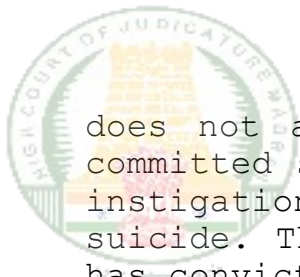
8.P.W.9, Inspector of Police, who conducted the investigation and filed the final report. P.W.10, is the Inspector of Police, who registered the complaint, conducted inquest, recorded the statement of witnesses.

9.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same. He did not examine any witness and not marked any document.

10.The trial Court after considering all the materials available on record, convicted the appellant/accused and sentenced him to undergo imprisonment as mentioned in paragraph No.1 of this Judgment. Challenging the same, the present Criminal Appeal has been filed.

11.I have heard Mr.Chellapandian, learned Senior Counsel appearing for the appellant and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

12.The learned Senior Counsel appearing for the appellant/accused submitted that absolutely there is no evidence to show that the appellant has abetted the deceased to commit suicide. The evidence of P.Ws1 and 2, who are the mother and brother of the deceased stated that the appellant/accused was always willing to marry the deceased and they have only postponed the marriage after six months. Even though it was alleged that there was a wordy quarrel between the deceased and the appellant/accused near the railway gate petty shop and the prosecution did not examine any witness to prove the quarrel, which ultimately lead the deceased to commit suicide. As per the evidence of P.W.5, who is the sister of the deceased, in the hospital, the deceased gave a dying declaration before the learned Judicial Magistrate, which was suppressed by the prosecution, and the cause of death itself was not proved by the prosecution, and the conviction of the accused under Section 306 IPC



does not arise. Apart from that, even assuming that the deceased committed suicide, from the evidence of PW1, absolutely there is no instigation by the appellant which leads to the deceased to commit suicide. The Court below without considering the evidence properly, has convicted the appellant/accused.

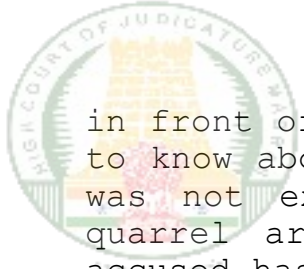
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13. Per contra, the learned, Additional Public Prosecutor appearing for the respondent would contend that the evidence of P.Ws 1, 2 and 5, who are the mother, brother and friend of the deceased deposed that the accused was in love with the deceased and the accused has also promised to marry her, but later, he refused to marry her and when the same was questioned by the deceased, the accused abused her in filthy language. Due to which, a wordy quarrel arose between them and being instigated by the act of the accused, the deceased has committed suicide. The prosecution has clearly proved that the accused promised to marry the deceased, subsequently, he gone back on his promise due to the same, the deceased has committed suicide, and it clearly established that the appellant has abetted the deceased and proved the offence under Section 306 IPC. The trial Court after considering the entire materials available on record, has rightly convicted the appellant and there is no reason to interfere with the well considered judgment of the trial Court.

14. I have considered the rival submissions made on either side and perused the records carefully.

15. The case of the prosecution is that the appellant and the deceased loved each other and the appellant has also promised to marry the deceased but, subsequently, has gone back on his promise, and he has also quarrelled with the deceased, and abused her which lead, the deceased has committed the suicide. But from the evidence of P.Ws 1 and 2, it is seen that the accused is ready and willing to marry the deceased, but, it is only P.W. 1 and the family members of the deceased postponed the marriage for some time. Apart from that, on 04.09.2007, the appellant has also expressed his willingness to marry her on 06.09.2007, but on 06.09.2007, at about 07.00 a.m., the deceased committed suicide. P.W. 2, brother of the deceased stated that when the accused is expressed his willingness to marry her, the family members of the deceased only postponed the marriage for six months. Then on 04.09.2007, there was a wordy quarrel arose between them near a petty shop at the railway gate and during the quarrel, the accused abused her with filthy language, due to which, she committed suicide. From their evidence, it is seen that the accused was ready and willing to marry the deceased, but the deceased family only postponed the marriage. Even though the marriage was fixed on 06.09.2007, but the deceased has committed suicide on morning at 7.00 a.m., on the very same day. From their evidence, it could be seen that the appellant/accused did not refuse to marry her.

16. Apart from that, even though it is stated that there was a wordy quarrel between the deceased and the accused on 04.09.2007



in front of a petty shop, owned by one Selvi, and P.Ws 1 and 2, came to know about the occurrence through that Selvi, but the said Selvi was not examined by the prosecution to prove that there was a quarrel arose between them on 04.09.2007 and due to which, the accused has committed suicide. According to P.W.5, the sister of the deceased, when the deceased was admitted in the hospital, a Judicial Magistrate has recorded the dying declaration of the deceased, but the dying declaration was not marked before the Court, and the prosecution has suppressed the same and the truth is not before this Court.

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/ VI)AY KUMAR MAHAJAN AND ANOTHER) , it is held as follows:-

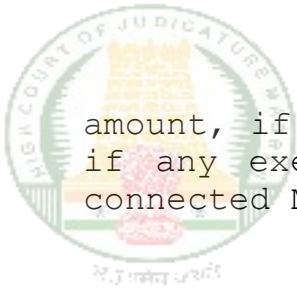
"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases 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 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."

20. In the above circumstances, considering all the above materials, I am of the considered view that the prosecution has failed to prove the charge beyond reasonable doubt and the Court below without considering the materials available on record in a proper perspective, has convicted the appellant/accused under Section 306 IPC. Hence, the conviction and sentence passed by the court below against the appellant/accused is liable to be set aside.

21. In fine, this Criminal Appeal is allowed. The conviction and sentence passed in S.C.No.238 of 2010, on the file of the Mahila Court (Mahila Fast Track Court), Dindigul, against the appellant/accused is set aside and the appellant is acquitted. Fine



amount, if any, paid by him is ordered to be refunded and bail bonds if any executed by him, shall stand cancelled. Consequently, the connected M.P is also closed.

Sd/

Assistant Registrar (T&P)

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Sub Assistant Registrar

To

1.The Mahila Court,
(Mahila Fast Track Court),
Dindigul.

2.The Inspector of Police,
Palani Town Police Station,
Dindigul.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.V.PANDIYAN, Advocate, SR.No.80599

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20.09.2017

NS/MRP

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