

Bail Slip

- 1.Thiyagarajan
2. Vasuki

The above said appellants were directed to be released on bail as per order of this Court dated:23/06/2010 made in MP.I/2010 in CRL.A.No.361 of 2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on :03.07.2018]

[Pronounced on : 12.10.2018]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.361 of 2010

1.Thiyagarajan

2.Vasuki
Nos.1&3

.... Appellants/Accused

Versus

State rep.by
Deputy Superintendent of Police,
Ponneri Division,
Thiruvallur District
[Crime No.33 of 2007]

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the judgment delivered by the learned Additional District Sessions Judge cum Fast Track Court No.4, Ponneri dated 26.05.2010 in S.C.No.230 of 2008.

For Appellants : Mr.V.Bhiman
For Respondent : Mr.R.Surya Prakash,
Government Advocate (crl.side)

JUDGMENT

The convicted first and third accused are the appellants herein.

2. The learned Additional District Sessions Judge cum Fast Track Court No.4 at Ponneri, by judgment dated 26.05.2010, while acquitting the appellants under Section 498(A) of IPC, convicted them for the offence under Section 306 I.P.C and sentenced each of them to undergo two years Rigorous Imprisonment and imposed fine of Rs.1000/- each and in default to pay the fine to undergo another 3 months Rigorous Imprisonment.

3. Challenging the said conviction and sentence A1 and A3 have preferred this appeal.

4. The second appellant is the sister of the first appellant and first appellant is the husband of the deceased Vijayalakshmi and the second accused, Lakshmi, who is the mother of the appellants died, pending trial.

5. The learned counsel for the appellants has submitted that i) the appellants faced trial along with the 2nd accused in this case for alleged offences under Section 498(A) and 306 I.P.C. The appellants 1 and 2 who were arrayed as A1 and A3 are brother and sister respectively. The 2nd accused in this case namely Lakshmi is the mother of the 1st and 2nd appellants. During the course of trial, the 2nd accused died and the appellants alone faced the trial.

ii) The case against them is that they joined with their mother Lakshmi with an intention to separate the 1st appellant's child from his wife namely Vijayalakshmi. The said Vijayalakshmi self immolated herself on 13.02.2017 and a positive charge sheet was laid as against A1 to A3 under Sections 498(A) and 306 I.P.C. During the course of trial on the side of the prosecution, 13 witnesses were examined and 17 exhibits were marked and 1 material object was marked.

iii) The father and mother of the deceased Vijayalakshmi were examined as P.W.1 and P.W.2 and Selvam, who is the brother of the P.W.1, was examined as P.W.3. P.W.4 is Ravikumar who is the neighbour of the 1st appellant and the deceased and P.W.5 and P.W.6 are the witnesses who attested the confession statement of the appellants and the Observation Mahazar and they turned 'hostile'. P.W.7 is the witness who attested the Observation Mahazar and Seizure Mahazar and he also turned hostile. P.W.8 is the Head Constable who gave the requisition letter of the Inspector to the Tahsildar office at Egmore for inquest and he is the person who handed over the records to the hospital and P.W.9 is the Doctor who conducted the autopsy on the body of the deceased and P.W.10 is the Deputy Collector who conducted the inquest and sent a report to the RDO for further

investigation and P.W.11 is one Ranganathan who sent the report to the Deputy Superintendent of Police and P.W.12 is the Inspector of Ponneri Police Station who registered the F.I.R and P.W.13 is the Investigation Officer.

iv) The brief facts of the case is that the deceased resisted the 2nd accused to lift her child as the 2nd accused was having the disease namely "Filariasis". Hence, the accused tortured the deceased and as a result she committed suicide by self-immolation.

6. Mr.Bhiman, learned counsel for the appellants would submit that the alleged telephonic conversation between the deceased and P.W.1 has not been proved by the prosecution at the time of trial. P.W.1 had candidly admitted during the course of cross examination that the deceased and the 1st appellant lived happily.

7. The learned counsel for the appellants further submits that base of the case culminated from the fact that when the deceased resisted the 2nd accused from lifting her child as the latter was suffering from "Filariasis", the trial Court ought to have weighed the sensitiveness of the deceased in taking the extreme step and ought not to have held that the appellants are guilty of offence under Section 306 I.P.C. Further, P.W.13 Investigating Officer himself clearly stated that the reason for the case arises when the 2nd accused who was suffering from "Filariasis" tried to lift the child of the deceased and Inquest report - Exhibit All clearly states that there is no dispute between the deceased and the 1st appellant.

8. The learned Government Advocate (Crl.Side) has made submissions in support of the Judgment of the Sessions Court.

9. Points for determination are that Whether the order of conviction passed by the trial Court under Section 306 I.P.C. against the appellants herein is sustainable or not?

ii) Whether the sentence awarded by the trial Court is excessive?

10. Heard both sides and perused the records.

11. The learned counsel has argued that the marriage between the deceased Vijayalakshmi and the 1st appellant Thiyagarajan was solemnized, four years before the time of trial and they have begotten a child, and six months after the birth of the child, the victim Vijayalakshmi-wife of the 1st appellant herein committed suicide by self-immolation on 13.02.2007.

12. The solemnization of marriage, birth of the child and date of death are not disputed. As per Exhibit P.W.10-Post Mortem Certificate, the victim is said to have died due to the Hypovolemic shock out of burn injuries. The prosecution examined the parents and the paternal uncle of the deceased as P.W.1, P.W.2 and P.W.3. P.W.4 who is the neighbour of the first appellant is an auto driver who carried the injured to the Government Medical College Hospital. P.W.5, P.W.6, P.W.7 who are the Attestors of the confession statement and Observation Mahazar turned 'hostile'. While, P.W.8 and P.W.12 and P.W.13 are Police witnesses who deposed regarding the discharge of official duty. While, P.W.10 and P.W.11 are revenue witnesses who had deposed regarding conduct of the Inquest and submission of the Inquest Report Exhibit P11 and Exhibit P12 and Exhibit P10 is the Medical evidence regarding conduct of the Post-Mortem.

13. Heard the rival submissions made by the respective counsel for the respective parties and after going through the evidence of P.W.1, P.W.2 and P.W.3, the private prosecution witnesses, there seems to be only one reason for the victim committing suicide namely that the second accused Lakshmi (now deceased) mother-in-law of the victim Vijayalakshmi was suffering from "Filariasis" (ahidf;fhy;) and the victim girl resisted the second accused from lifting her child as the latter was suffering from "Filariasis" as she developed a notion that in such an event, the baby may also be infected with "Filariasis". Except the solitary incident, there is no other incident spoken to by P.W.1 and P.W.2 and P.W.3 assumes significance. It is also noted that both the private prosecution witnesses and P.W.1 and P.W.2, the parents of the victim girl have categorically admitted in the cross-examination that except for this reason the marital relationship between the first appellant-husband and the victim girl was smooth. Though, P.W.1 and P.W.2 have deposed that they received phone call immediately before the incident, however, it is found to be a material contradiction with their earlier statement and this also assumes significance.

14. After going through the evidence of private prosecution witnesses, P.W.1, P.W.2, P.W.3 and the cross-examination of the P.W.12 and P.W.13, police witnesses, this Court finds that the relationship between the first appellant and the deceased was smooth except the issue of lifting of the child by the mother-in-law A2 now deceased and there is no other incident pleaded by the parties and both the Investigation Officers P.W.12 and P.W.13 have categorically stated that there is no demand of dowry nor cruelty and accordingly, the Sessions Court has acquitted both the accused from the charge under Section 498(A), which also assumes significance. It is seen from Exhibit P11, Inquest Report that there was no dispute between the deceased and the first appellant-husband.

15. On a perusal of the evidence of revenue witnesses P.W.10 and P.W.11, it is seen that they have not recorded the statements of Panchayathar and in the cross-examination, both the revenue witnesses have categorically admitted that there is no demand of dowry and there is no cruelty, which also assumes importance in the background of the suggestive case that the victim Vijayalakshmi was a sensitive woman.

16. To attract the offence under Section 306 I.P.C and for conviction under the said Section, as per the judgment of the Honourable Apex Court rendered in M. Mohan V. State rep. by the Deputy Superintendent of Police reported in AIR 2011 SC 1238, there should be a positive act on the part of the accused. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

17. From the evidence available on record, I am of the considered view that there is no proximate link between the incident when the deceased denied permission to lift the child and the victim committing suicide which had taken place after a few days.

18. In the absence of any allegation under Sections 498(A) or 304(B) IPC provision under Section 306 I.P.C cannot be attracted. In the very same judgment, cited supra, it has been held as follows:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect, or what constitutes instigation must necessarily and if it appears to the Court that a victim committing suicide was hyper-sensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty and this Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), 2009 (16) SCC 605, had an occasion to deal with this

aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

...

Undoubtedly, the deceased had died because of hanging. The deceased was undoubtedly hyper-sensitive to ordinary petulance, discord and differences which happen in our day-to-day life. In a joint family, instances of this kind are not very uncommon. Human sensitivity of each individual differs from person to person. Each individual has his own idea of self-esteem and self-respect. Different people behave differently in the same situation. It is unfortunate that such an episode of suicide had taken place in the family. But the question remains to be answered is whether the appellants can be connected with that unfortunate incident in any manner?

19. Thus, on a careful perusal of the entire materials on record and law, on the point in connection with the instigation or abetment to commit suicide under Section 306 I.P.C and the evidence available as discussed above, the appellants are not remotely connected with the offence under Section 306 I.P.C and in the absence of any positive evidence indicating on the part of the accused either to instigate or to abet or to aid the victim in committing the suicide, conviction cannot be sustained and as such the prosecution has failed to place on record, any positive evidence of the above nature. As indicated above, except the isolated event of denying permission to the mother-in-law namely the second accused to lift the baby on the ground that mother-in-law was suffering from "Filariasis" and the human sensitivity of each individual differs from person to person and it is unfortunate that such an episode had taken place in that family. But the question remains is that whether these appellants are connected with that unfortunate incident, in any manner known to law and in the absence of any legal evidence the answer could be in the negative only.

20. Accordingly, this Criminal Appeal is allowed and the

conviction and sentence passed in S.C.No.230 of 2008 dated 26.05.2010 on the file of Additional District Sessions Judge cum Fast Tract Court No.4, Ponneri is hereby set aside and the appellants/accused are set at liberty and they are exonerated from the charges framed against them and fine amount paid is ordered to be returned and bail bond executed by them shall stand cancelled.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Sessions Judge,
cum Fast Track Court No.4,
Ponneri.

2.The Judicial Magistrate,No.I
Ponneri.

3.The Chief Judicial Magistrate,
Tiruvallur.

4.The Deputy Superintendent police,
Ponneri, Tiruvallur District.

CrI.A.No.361 of 2010

KS (CO)
GSP (01/11/2018)

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