



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.OP[MD]No.4601 of 2015

and

M.P. (MD) No.1 of 2015

- 1.Issac Packiyaraj
- 2.I.Sam Jacob
- 3.Sam Mohan Raj
- 4.Packiaraj
- 5.A.William
- 6.V.Gnanathangam
- 7.M.Thangam
- 8.A.Mosac
- 9.T.Rasalraj @ Kovilpillai
- 10.V.Klien Ebenezer
- 11.Y.Gnana Yoshlim

... Petitioners/Accused 1 to 11

Vs.

- 1.The State represented by
The Inspector of Police,
Suchidrum Police Station,
Kanyakumari District.
(Crime No.423 of 2014)

...1st Respondent/Complainant

- 2.Rajathi @ Sudha

...2nd Respondent/
Defacto Complainant

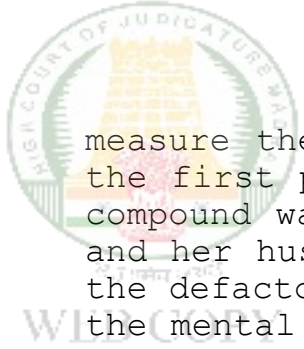
PRAYER: Petition filed under Section 482 of Cr.P.C, to call for the records in Crime No.423 of 2014 on the file of the first respondent, and quash the same.

For Petitioners	: Mr.Veera.Kathiravan Senior Counsel for Mr.C.Robert Bruce
For R1	: Mr.A.P.G.Ohm Chairma Prabhu Government Advocate (Crl.side)
For R2	: Mr.L.George Paul Anto

O R D E R

This petition is filed to quash the F.I.R in Crime No.423 of 2014 for the offence under Sections 147, 148, 447, 448 and 306 IPC and Section 3(1) of TNPPDL Act on the file of the first respondent.

2.The case of the prosecution is that there was a dispute with regard to a compound wall separating the defacto complainant land and a nearby church. With regard to the same, the defacto complainant as well as the Pastor of the Church have agreed to



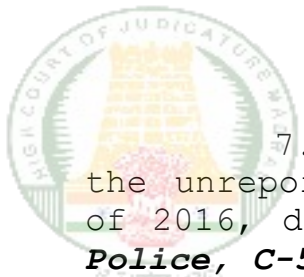
measure the land with regard to the compound wall. On 13.07.2014, the first petitioner along with others have demolished the disputed compound wall worth about Rs.50,000/-, when the defacto complainant and her husband tried to prevent the same, the accused has scolded the defacto complainant and her husband. Based on the occurrence and the mental agony suffered by the husband of the defacto complainant consumed poison and committed suicide. Hence, the present case.

3.The learned Senior Counsel for the petitioners contended that even as per the complaint, there is absolutely no averment to attract the offence under Section 306 IPC and there is no *mens rea* which is essential to attract the offence under Section 306 IPC, mere uttering words without *mens rea* would not attract the offence under Section 306 IPC. Further, he would contend that the ingredients of the other offences under Sections 141, 147 and 148 IPC are also not attracted as against the petitioners. Therefore, he prays for quashing of the F.I.R.

4.Per contra, the learned counsel for the second respondent/defacto complainant would submit that admittedly, the property belongs to the defacto complainant and knowing fully well, the petitioners trespassed into the property belongs to the defacto complainant by JCB and demolished the compound wall. When the petitioners came to the place of occurrence, the husband of the defacto complainant warned them and requested them not to demolish the compound wall and if they do so, he would commit suicide. Even then, the petitioners not heeding the said request made by the defacto complainant trespassed into the defacto complainant's property and demolished the entire compound wall. Therefore, he committed suicide. He would further submit that since there are specific averment and allegations as against the petitioners to attract all the offences, F.I.R cannot be quashed on its threshold. The first respondent police has to investigate the complaint and to file a final report. Therefore, he prays for dismissal of this petition.

5.Heard the learned senior counsel for the petitioner and the learned counsel for the respondents.

6.It is seen from the F.I.R that on 13.07.2014, at about 11.00 p.m, the petitioners trespassed into the house premises of the defacto complainant and demolished the compound wall. They caused damages to the compound wall to the tune of Rs.50,000/-. Admittedly, no premises belongs to the defacto complainant. Therefore, the offence under Sections 147, 148, 447 and 448 of IPC and Section 3(1) of TNPPDL Act, are squarely attracted as against the petitioners. As far as the offence under Section 306 IPC is concerned, on 13.07.2014, when the petitioners trying to demolish the compound wall by JCB, they scolded the husband of the defacto complainant to go and die.



7. In this regard, the learned Senior Counsel relied upon the unreported decision of this Court made in Crl.O.P.(MD)No.15407 of 2016, dated 05.10.2018 (**S.A.Margaret Angel Vs. The Inspector of Police, C-5 Karimedu (L&O) Police Station, Madurai City**), wherein it has been held as follows:-

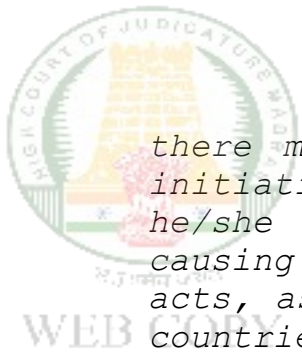
10. The first judgment of the Hon'ble Supreme Court is in **Pinakin Mahipatray Rawal Vs. State of Gujarat** reported in (2013) 10 SCC 48. The relevant portions are extracted here under:-

9. The prosecution stand is that the abovementioned letters would disclose the feelings and sufferings of an unfortunate wife having come to know of the love affair between her husband A-1 and his colleague A-2, which ultimately led her to commit the act of suicide.

13. Alienation of affection by a stranger, if proved, is an intentional tort i.e. interference in the marital relationship with intent to alienate one spouse from the other. Alienation of affection is known as "Heart Balm" action. Anglo-Saxon common law on alienation of affection has not much roots in this country, the law is still in its nascent stage. Anglo-Saxon based action against third parties involving tortuous interference with the marital relationship was mainly compensatory in nature which was earlier available to the husband, but, of late, a wife could also lay such a claim complaining of alienation of affection. The object is to preserve marital harmony by deterring wrongful interference, thereby to save the institution of marriage. Both the spouses have a valuable interest in the married relationship, including its intimacy, companionship, support, duties, affection, welfare of children etc.

14. We notice, in this country, if the marital relationship is strained and if the wife lives separately due to valid reasons, the wife can lay a claim only for maintenance against the husband and if a third party is instrumental for disrupting her marriage, by alienating her spouse's affection, companionship, including marital obligations, seldom, we find the disgusted spouse proceeds against the intruder into her matrimonial home. Possibly, in a given case, she could question the extent, that such injuries can be adequately compensated, by a monetary award. Such an action, of course, may not protect a marriage, but it compensates those who have been harmed.

15. We are, however, of the view that for a successful prosecution of such an action for alienation of affection, the loss of marital relationship, companionship, assistance, loss of consortium, etc. as such may not be sufficient, but



there must be clear evidence to show active participation, initiation or encouragement on the part of a third party that he/she must have played a substantial part in inducing or causing one spouse's loss of other spouse's affection. Mere acts, association, liking as such do not become tortuous. Few countries and several States in the United States of America have passed legislation against bringing in an action for alienation of affection, due to various reasons, including the difficulties experienced in assessing the monetary damages and few States have also abolished "criminal conversation" action as well.

19. Marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on. Extra-marital relationship as such is not defined in the Penal Code. Though, according to the prosecution in this case, it was that relationship which ultimately led to mental harassment and cruelty within the explanation to Section 498-A and that A-1 had abetted the wife to commit suicide. We have to examine whether the relationship between A-1 and A-2 amounted to mental harassment and cruelty.

21. This Court in *Girdhar Shankar Tawade Vs. State of Maharashtra*, examined the scope of the explanation and held as follows : (SCC p.180 para 3)

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498A."

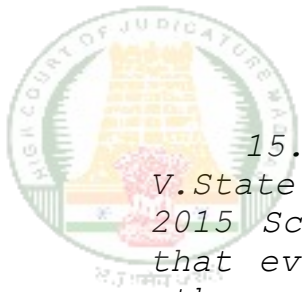


22. In *Gananath Pattnaik Vs. State of Orissa*, (2002) 2 SCC 619, this Court held that the concept of cruelty under Section 498A IPC and its effect under Section 306 IPC varies from individual to individual also depending upon the social and economic status to which such person belongs. This Court held that cruelty for the purpose of offence and the said Section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty or harassment in a given case.

23. We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498-A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extra marital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide.

27. Section 306 refers to abetment of suicide. It says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306 the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.

11. The second judgment of the Hon'ble Supreme court is in **K.V. Prakash Babu Vs. State of Karnataka** reported in (2016) 4 MLJ (Cr1) 750 (SC) LNIND 2016 SC 565. The relevant portions are extracted here under:-



15. Slightly recently in *Ghusabhai Raisangbhai Chorasiya V. State of Gujarat* AIR 2015 SC 2670: (2015) 11 SCC 753: LNINDU 2015 Sc31, the Court perusing the material on record opined that even if the illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the explanation (a) to section 498-A of the IPC which includes cruelty to drive the woman to commit suicide, would not be attracted. The relevant passage from the said authority is reproduced below:-

"True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in *Pinakin Mahipatray Rawal* (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant no.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A which includes cruelty to drive a woman to commit suicide, would not be attracted."

16. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult to generalize but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.

12. It is clear from the above judgments rendered by the Hon'ble Supreme Court that the mere extramarital relationship, by itself, will not amount to a cruelty unless it is of such a nature as is likely to drive the spouse to commit the suicide.



In this Case, the deceased husband became hyper sensitive after talking with the petitioners over phone, wherein they had stated that the first petitioner will continue with the illicit relationship and if the husband does not like it, he can go and die. This one phone call had driven the husband to commit the suicide. Sensitivity to ordinary petulance, discord or differences in domestic life should not normally drive a person to commit suicide, unless the person is unduly hyper sensitive. In such a case the accused persons cannot be convicted for an offence under Section 306 IPC. It must be established that there was a strong mens rea to commit the offence under Section 306 IPC and there must be a positive act on the part of the accused to instigate and aid in the commission of suicide. The words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea in order to constitute instigation to commit suicide.

13. It is also relevant to take note of the judgment of this Court in **Ananda Sekaran Vs. State by Inspector of Police, K1 Sembiam Police Station, Chennai** reported in **2007-1-L.W. (Cr1) 163**. The relevant portions are extracted hereunder:-

A sensitive wife, aggrieved by the ordinary words, said to have been uttered by the husband "Ue;jhy; ,U my;yJ brj;JtpL" meaning 'whether you live or die', had committed suicide by pouring kerosene, setting ablaze, as spoken by P.W.2 creates a doubt genuinely whether that would come within the meaning of instigation and in my considered opinion "no" Therefore even assuming that P.W.2's evidence is true, it fails to prove the ingredients required under Section 107 IPC, leading to 306 IPC or compelling the Court to infer the abetment as contemplated under law. P.W.2 is (was) under the custody of the maternal grandfather or grandmother. Therefore, she is bound to response, to the command of the mother of the deceased. In this view, the evidence given by a child witness without corroboration may not be safe to be acted upon to prove the abetment. Assuming that the oral evidence of P.W.2 is true as said above, it fails in standard to attract the instigation which is primarily needed for abetment.

18. Mr. T. Sundanthiram, the learned Senior Counsel arguing that in the absence of mens rea, in the causal way, if he husband scolded the wife "to go and die" as in this case, it will not amount to abetment and in aid he relied on decisions of the Apex Court in **Ramesh Kumar Vs. State of Chhattishgarh** (2002 SCC (Cri) 1088) and **Sanju v. State of MP** (2002 SCC (Cr1) 1141). In the case involved in the first decision, the accused/appellant therein was convicted for the offences under Sections 498-A and 306 IPC, which was challenged. As seen from paragraph-22 of the judgment, in



that case also, the accused tried to put off fire and also took the wife to the hospital for treatment, as the facts available in the case on hand. Considering that aspect and the other kind of inconsistency available, the Apex Court has held that there would not have been instigation and the relevant sentences read:

"The conduct of the accused trying to put off fire and taking his wife to the hospital also improbabilise the theory of having abetted suicide"

which dictum deserves to be applied in all force to the case on hand.

19. In the second case, referring the above decision, when the case was dealt with under Section 306 r/w 107 Ipc, the Apex Court held that the words uttered in a quarrel or on the spur of the moment such as 'to go and die' cannot be taken to be uttered with mens rea and therefore, the person so said cannot be convicted under Section 306 IPC. If the accused had the motive or intention that his wife should die committing suicide on her own, then there must be some instance bringing to surface the mens rea, which is essential as held by the Apex Court. No instance brought to the notice of the Court how the accused entertained mens rea or how and why he should think that his wife should commit suicide for which he should have abetted. If really he had the intention that his wife should die and in that process with mens rea if he had scolded her, ordinarily he would not have gone to the rescue of the wife by putting off the fire, then taking to the hospital as observed by the Apex court and in the normal course, he would have left the house itself, allowing the wife to die, which is not the case admittedly here. Therefore, the mens rea is also absent and this being the position, the conviction appears to be incorrect.

20. In **Swamy Prahaladdas V. State of MP** (1995 SCC (Cr1.) 943) the Apex Court has held when the offence under Section 306 Ipc was challenged, for quashing, when the suicide is not the direct result of the words uttered by the accused, no person could be called to face the trial under Section 306 IPC. In the case involved in the above decision, it seems the accused therein scolded the deceased or remarked 'to go and die'. Thereafter the deceased went home in a dejected mood committed suicide, which was sought to be brought under Section 306 IPC. Considering the above facts and circumstances of the case, the Apex Court held mere uttering the words 'go and die' is not sufficient to bring the offence under Section 306 IPC.

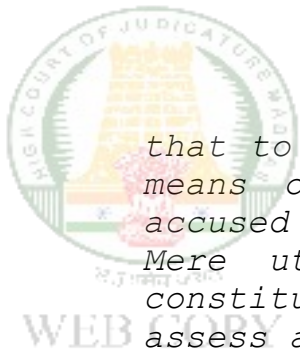


21. In **State of Gujarat v. Sunilkumar Kanaiyalal Jain** (1997 CrI.L.J.2014) a Division Bench of the Gujarat High Court considering the scope of Section 306 IPC elaborately dealt with abetment, realising the responsibility of the Court also has observed, "better die today than tomorrow" if had been uttered cannot be said to be the abetment in the eye of law since the words might have been uttered due to outburst of one's own fatuity or anger or consternation without any intention or knowledge or might be the rude or insulting, not with desire to instigate the person to commit suicide, which principle also could be extended to the above case on hand. By applying the law settled by the Supreme Court to the facts of the case on hand, as well as analysing the evidence available on record and taking into consideration the over all circumstances of the case also after deep consideration, I am of the considered opinion, no offence has been made out under Section 306 IPC.

14. This Court has also considered the similar issue in **Sekar Vs. State by Inspector of Police, Tiruchengode Police Station, Namakkal District** reported in (2011) 3 MLJ (CrI) 829. The relevant portions are extracted hereunder:-

5. In support of his contention, the learned counsel for the appellant relies on the judgment of the Hon'ble Supreme Court in **Swami Prahaladdas Vs State of M.P.** Reported in 1995 SCC (CrI.) 943, wherein the Hon'ble Supreme Court has held that mere remark made by the accused to the deceased 'to go and die' will not constitute the real abetment to commit suicide as enshrined under Section 306 I.P.C. Similarly, the learned counsel relies on yet another judgment of a Division Bench of Gujarat High Court in **State of Gujarat VS Sunilkumar Kanaiyalal Jain** reported in 1997 CrI.L.J.2014 wherein also, the Division Bench has taken the view that the remarks made by the accused to his wife that 'it is better for her to die today than tomorrow' will not constitute abatement as provided under Section 306 I.P.C. Following those two judgments, a learned Judge of this Court (Hon'ble Justice Sudanthiram) in **Rukmani VS State** represented by the Sub Inspector of Police reported in 2008(2) L.W.(CrI) 776 has also taken similar view to say that such words which are uttered during quarrels cannot be given literal meaning so as to say that the accused had abetted the commission of suicide. I am in full agreement with the above judgments.

6. Apart from that, the learned counsel relied on the recent judgment of the Honble Supreme Court in **Sontui Rama Krishna VS Sonti Shanti Sree** and another reported in A I R 2009 Supreme Court 923, wherein the Supreme Court has held



that to constitute the abatement, it should be established by means of acceptable evidence by the prosecution that the accused had the animus to drive the woman to commit suicide. Mere uttering of words ' go and die' itself will not constitute such abetment. Applying the above principles, to assess as to whether the accused really had the animus and had driven the woman to commit suicide, the Court has to take into account the credibility of the circumstances. In this case, as I have already stated, except the evidence to the effect that there were frequent domestic quarrels between the appellant and D.1, there is no other material available on record to show that the appellant had the intention to drive the woman to commit suicide . It is also not on record that the deceased committed suicide because of any abatement on the part of the appellant. Therefore, the conviction of the appellant under Section 306 IPC cannot be sustained as the prosecution has failed to bring home the alleged guilt of the appellant. "

8.In view of the above order passed by this Court following the decisions of the Hon'ble Supreme Court of India holding that the word uttered by the petitioners is not sufficient to constitute the offence under Section 306 IPC. Therefore, this Court is inclined to delete the offence under Section 306 IPC as against the petitioners.

9.In view of the above discussions, this criminal original petition is partly allowed by quashing the FIR in respect of the offence under Section 306 IPC alone as against the petitioners. Insofar as the other offences are concerned, the first respondent is directed to conduct investigation in Crime No.423 of 2014 and file a final report within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1.The Inspector of Police,
Suchidrum Police Station,
Kanyakumari District.



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

+1 CC To MR.L.GEROGE PAUL ANTO, Advocate SR. NO.91595

+2 CC To MR.F DEEPAK, Advocate SR. NO. 91355

Cr1.OP[MD]No.4601 of 2015
and

M.P. (MD)No.1 of 2015
23.10.2018

RMI

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