

Bail Slip

The Appellant/Accused namely Saroja W/o.Raman was directed to be released on bail as per order of this Court dated 16.04.2010 in CrI.MP.No.1 of 2010 in CrI A.No. 217 of 2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.217 of 2010

Saroja

..Appellant

Vs

State by Inspector of Police
Maruvathoor Police Station,
Perambalur

..Respondent

Prayer:- This Criminal Appeal is filed against the judgement of conviction and sentence, dated 02.03.2010 made in SC.No.8 of 2007, by the Sessions Court (Mahila Court) Perambalur.

For Appellant : Mr.A.N.Rajan

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 02.03.2010, made in SC.No.8 of 2007, by the Sessions Court (Mahila Court) Perambalur, convicting and sentencing the Appellant/A2, for the offence under Sections 363 and 306 of IPC, to undergo seven years Rigorous Imprisonment for each offence and to pay a fine of Rs.1000/-, for each offence, in default to undergo three months Rigorous Imprisonment, for each offence and ordering the sentences to run concurrently.

2. According to the Prosecution, there were two accused persons, namely, Annadurai/A1 and the Appellant/A2 and they were charge sheeted for the offence under Sections 363 and 306 of IPC, stating that the accused had abducted the deceased, Rani, wife of one Boominathan, with an intention to indulge her in illicit intimacy with another person and on coming to know such an intention, due to mental agony, on 19.02.2005 at 19.00

hours, at Samayapuram Mariamman Temple, the deceased committed suicide, by consuming poison.

3. The case was taken on file in SC.No.8 of 2007, by the Sessions Court (Mahila Court) Perambalur and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.16 and also marked Exs.P1 to P14 and Mos.1 to 6.

4. PW.1 is the husband of the deceased. PW.2, PW.3 and PW.5 are the residents of the Illuppaikudi Village, where the accused and the deceased were living. PW.4 is the daughter of the deceased and PW.1. PW.6 is the resident of Maruvathur Village. PW.7, PW.8, PW.9, PW.10 and PW.11 are the residents of Samayapuram Village. PW.12 is the Sub Inspector of Police, Samayapuram Police Station. PW.13 is the Head Constable, Samayapuram Police Station, Trichy. PW.14 is the Doctor, attached to the Government Hospital, Trichy, who conducted the postmortem. PW.15 is the Sub Inspector of Police, Maruvathur Police Station. PW.16 is the Inspector of Police, Maruvathur Police Station.

5. Ex.P1 is the complaint given by PW.1, dated 02.04.2005. Ex.P2, dated 2.4.2005 is the observation mahazar. Ex.P3, dated 04.04.2005, is the signature of PW.6 in the confession statement. Ex.P4 is the copy of the observation mahazar. Ex.P5 is the complaint dated 19.2.2005 given by PW.11. Ex.P6, dated 19.2.2005 is the rough sketch. Ex.P7 dated 19.2.2005 is the inquest report. Ex.P8, dated 19.2.2005 is the printed First Information Report. Ex.P9, dated 28.2.2005 is the postmortem report. Ex.P10, dated 8.7.2005 is the final opinion of the Doctor. Ex.P11, dated 7.7.2005 is the chemical analysis report. Ex.P12 is the printed First Information Report, dated 18.2.2005. Ex.P13 dated 2.4.2005 is the rough plan and Ex.P14 is the alteration report.

6. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused have come with the version of total denial and stated that they have been falsely implicated in this case. During the trial, A1 died.

7. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, held that since during the trial A1 died, the charges levelled against A1 got abated and found the Appellant/A2 guilty and awarded punishments as referred to above, which is challenged in this Criminal Appeal.

8. This court heard the submissions of the learned counsel on either side.

9. The learned counsel for the Appellant would submit that PW.1 is a hearsay witness, who had deposed that he heard from his daughter, PW.6 that his wife left along with the accused on 18.02.2005 and thereafter, after 10 days, he received

an information from the Samayapuram Police Station, stating that his wife was found dead and a case was registered by the Samayapuram Police Station, in Cr.No.101 of 2005, for the offence under Section 174 of Cr.PC. Even at that time, no complaint was made against the accused, stating that the accused abducted the deceased and that the accused were responsible for her death. Strangely, after 48 days, a complaint was given to the Maruvathur Police Station, stating that the Appellant along with the deceased accused, abducted the wife of PW.1 and they abetted her to commit suicide. He would submit that in respect of the death of the deceased, a case was registered in Cr.No.35 of 2005 for the offence under Section 306 of Cr.PC. Strangely, in the inquest report, Ex.P7, it has been stated by the Panchayatar that the deceased died due to fits and further, the forensic expert has also stated that there was no poisonous substance found in the viscera. Whereas, strangely, the Doctor, PW.14, who had conducted the postmortem, had stated that the deceased would appear to have died of consuming poison. He would further submit the Prosecution has not been able to prove the charges levelled against the Appellant beyond all reasonable doubts, by letting in cogent and convincing evidence and that the entire case of the Prosecution is full of discrepancies, and infirmities and that the Trial Court erred in convicting the Appellant based on circumstantial evidence.

10. On the other hand, the learned Additional Public Prosecutor would fairly submit that even according to PW.1, the deceased went along with the other accused in a bus and there is no evidence that the accused abducted the deceased. Further, he would also fairly concede that the body of the deceased was not identified and that the complaint has been given much belatedly after 48 days of the initial occurrence where PW.1 has stated that he was informed by his daughter, PW.4 that his wife voluntarily left along with the accused in a bus.

11. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

12. What is to be seen is as to whether the Prosecution has proved its case beyond all reasonable doubts and whether the Trial Court is right and justified in convicting the accused for the charges framed against her.

13. The charges levelled against Appellant are under Sections 363 and 306 of IPC, namely, the offence of kidnapping and abetment to commit suicide.

14. The grounds, infirmities and discrepancies, on which the learned counsel for the Appellant has assailed the impugned judgement of conviction and sentence, are that there is no valid, cogent and convincing evidence, both oral and documentary, to base conviction on the Appellant and that there was an unexplained delay in lodging the complaint to the Respondent by PW.1, who happens to be the husband of the

deceased and that the evidence of a hearsay witness, PW.1 cannot be taken into account to base conviction. Further, when the case was registered for the offence under Section 174 of Cr.PC, on the file of the Samayapuram Police Station at the earliest, and another complaint was given to Maruvathur Police Station, for the offence under Section 306 of IPC, the Trial Court has failed to consider the two First Information Reports for the same offence and that the ingredients of Section 306 of IPC have not been proved by the Prosecution.

15. Another discrepancy pointed out by the learned counsel for the Appellant is regarding the nature and manner of death of the deceased, in as much as, according to the Panchayatars, the deceased died due to fits, whereas according to PW.14, Doctor, who conducted the postmortem, the deceased died due to consuming poison, but according to the chemical analysis report, there was no poisonous substance found in the viscera.

16. Yet another discrepancy pointed out by the learned counsel for Appellant is that the body of the deceased was not identified and the photo of the deceased was also not marked as well and that there is no question of abduction, in view of the evidence of PW.2 to 4.

17. The above infirmities and discrepancies pointed out by the learned counsel for the Appellant would certainly go to the root of the case of the Prosecution and would be fatal to the case of the Prosecution, for which, a detailed and proper analysis of the evidence is essentially required.

18. According to the Prosecution, the deceased died on 19.2.2005 at 7.00 p.m. by consuming poison due to the mental agony caused to her, by the acts of the accused, in abducting her for the purpose of indulging her in illicit acts. But, on a perusal of the evidence of the witnesses, this Court finds that their evidence is totally contrary to the said version of the Prosecution.

19. PW.1 is a hearsay witness, who had deposed that his wife left along with the accused in a bus on 18.02.2005 and after 10 days, he received an information from the Samayapuram Police Station, stating that his wife was found dead and a case was registered under Section 174 of Cr.PC. Thus, PW.1 was aware of the fact that the deceased went along with the accused on 18.02.2005. Even at that time, no complaint was made against the accused, but strangely, after 48 days, on 02.04.2005, a complaint was made to Maruvathur Police Station, stating that the accused abducted his wife and they abetted her to commit suicide.

20. Apart from the fact that PW.1 knew that the deceased went along with the accused on 18.2.2005, there is also evidence to speak about the said fact, viz. there was no abduction and that the deceased went along with accused, which was seen by the witnesses, namely, PW.2, PW.3 and PW.4. PW.2 and PW.3 are the persons of the area, where the deceased was

residing and PW.4 is the daughter of the deceased.

21. PW.2 and PW.3 had deposed in their evidence that they had seen the deceased along with the accused in a bus, going to Ariyalur on 18.2.2005. PW.4, who is the daughter of the deceased, had also deposed to the same effect that her mother, had gone voluntarily along with the accused in a bus going to Ariyalur on 18.2.2005. In view of such evidence, it can also be safely held that there was no abduction as alleged by the Prosecution under Section 363 of IPC.

22. Ex.P8, which is stated to be the first and earliest complaint, was given by PW.11, who was working as the Superintendent in the Samayapuram Mariamman Temple, on 19.2.2005, which was registered in Cr.No.101 of 2005 for the offence under Section 174 of Cr.PC. Whereas, in Ex.P8, it is stated that PW.11 seen the deceased, who stayed in the Temple and died due to fits. In the inquest report, Ex.P7, it has been stated by the Panchayatar that the deceased died due to fits.

23. Further, as per Ex.P11, dated 7.7.2005, Chemical Analysis Report, there was no alcohol or other poisonous substance detected in the viscera, namely, stomach and its contents, liver and kidney and preservative. But, strangely and contrary to Ex.P11, in Ex.P10, Final Opinion of the Doctor, PW.14, who conducted the postmortem, it is opined that the deceased would appear to have died of due to poisoning. Thus, it is seen that there are different and contradictory versions in the evidence of the Prosecution regarding the manner of death, which goes to the root of the case of the Prosecution.

24. Further, coming to the charge of abetment, for making out an offence under Section 306 of IPC, one essential and requisite ingredient is 'abetment' by the accused to deceased to commit suicide. As per Section 107 of IPC, abetment is constituted by (i) Instigating a person to commit an offence; or (ii) Engaging in a conspiracy to commit it; or (iii) Intentionally aiding a person to commit it.

25. On examining the facts of the case and the evidence, it appears that none of the accused provoked, incited or urged or encouraged the deceased to commit suicide. Merely on the ground that deceased went along with accused, it cannot be assumed that the accused compelled the deceased to indulge in illegal acts and thereby, abetted the deceased for committing suicide. For abetment to commit suicide, there should be evidence of any positive action proximate to the time of occurrence on the part of the accused which lead or compelled the person to commit suicide.

26. In this regard, it is pertinent to note that PW.2 to PW.4 had seen the deceased, going in a bus to Ariyalur, along with the deceased on 18.2.2005 and thereafter, they do not know about what happened. They deposed that they heard the incident and deposing accordingly. PW.1, PW.2, PW.3 and PW.4 are hearsay witnesses and the evidence of such hearsay witnesses cannot be taken into consideration. Further, this Court finds no direct

evidence to implicate the accused to the offence of abetment and to show that the deceased was kidnapped against her will and she committed suicide by abetment by the accused. Since there is absolutely no material on record to indicate that the accused in any manner instigated, incited or provoked the deceased to commit suicide, or to indicate any intention on their part that the deceased should commit suicide, it cannot be held that Appellant in any manner abetted the deceased to commit suicide. In the absence of essential ingredient of abetment, no charge for the offence under Section 306 of IPC can be framed against the Appellant/ accused.

27. As stated above, though PW.1 knew that on 18.02.2005 itself, the deceased went along with the deceased, PW.1 gave the complaint Ex.P1, after 48 days, on 02.04.2005. Thus, it is seen that there was an inordinate delay in making the complaint, Ex.P1, by PW.1, which has not been explained by the Prosecution and this unexplained delay is fatal to the prosecution case, benefit whereof must go to the accused persons and earn them acquittal.

28. The most important question in the present case that warrants a careful consideration of the prosecution evidence is the identification of the dead body. It is on record that the dead body of the deceased was kept in the Government Hospital, Tiruchy, for ten days. Only on 28.2.2005, postmortem was conducted. Only at the time of making Ex.P1, complaint on 02.04.2005, photograph of the deceased was shown to PW.1 and PW.1 identified that it was the photograph of his wife. But, the said photograph was not produced and marked by the Prosecution, which would also go to the root of the case of the Prosecution.

29. As stated above, there were two complaints, namely, Ex.P1 by PW.1, dated 02.04.2005, which was registered in Cr.No.35 of 2005 under Section 306 of IPC, by the Maruvathoor Police Station and another complaint, Ex.P8, given by PW.11, which was registered in Cr.No.101 of 2005 for the offence under Section 174 of Cr.PC, on the file of the Samayapuram Police Station. Ex.P8 is the earliest complaint made on 19.02.2005. If PW.2 to PW.4 had seen the deceased went along with the deceased, on 18.2.2005 by coercion, they would have given a police complaint on the same day itself and only after getting information about the death of the deceased from the Police Station, when the case was registered under Section 174 of Cr.PC by the Samayapuram Police Station, another complaint was given to Maruvathoor Police Station, after 48 days. The Trial Court failed to consider the two First Information Reports registered for the same offence under different provisions. This fact also falsify the case of the Prosecution.

30. With regard to case of abetment to commit suicide, the Honourable Supreme Court in (2017) 1 SCC 433 (Gurucharan Singh Vs State of Punjab), in Paras 20 to 22 and Paras 27 to 29, has held as follows:

"20. Section 306 of the Code prescribes the

punishment for abetment of suicide and is designed thus:

"306.Abetment of suicide. - If any person commits 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."

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 this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize 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.

22. Section 107 IPC defines abetment and is extracted hereunder:-

"107. Abetment of a thing. - 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.

Explanation 1 - A person, who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that doing.

Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

Not only the acts and omissions defining the offence of abetment singularly or in combination are enumerated therein, the explanations adequately encompass all conceivable facets of the culpable conduct of the offender relatable thereto."

27. The pith and purport of Section 306 IPC has since been enunciated by this Court in *Randhir Singh vs. State of Punjab* (2004)13 SCC 129, and the relevant excerpts therefrom are set out hereunder:-

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In *State of W.B. Vs. Orilal Jaiswal* (1994) 1 SCC 73, this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences 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."

28. Significantly, this Court underlined by referring to its earlier pronouncement in *Orilal Jaiswal* (supra) that courts have to be extremely

careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in *Amalendu Pal @ Jhantu vs. State of West Bengal* (2010) 1 SCC 707.

29. That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in *S.S. Chheena vs. Vijay Kumar Mahajan* (2010) 12 SCC 190."

31. Before Section 306 of IPC can be acted upon, there must be clear proof of the fact that the death in question was a suicidal death. The offence of 'abetment' must conform to the definition of that term as given in Section 107 of IPC, that is to say, there must be instigation, cooperation or intentional assistance given to the commission of suicide. It is not necessary or indeed is it a part of the definition. That the suicide should have been committed in consequence of the abetment. In order to render a person liable as an abettor, it is, of course, necessary, as indeed it is in the case of any other offence, that the abettor should do something more than a mute spectator.

32. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained, as has been held in *M.Mohan Vs. State by Deputy Superintendent of Police* (CDJ-2011-SC-190).

33. Ultimately, as discussed above, in the case on hand, the evidence is so discrepant and contradictory, regarding the manner of death, abduction and abetment and there is absolutely no legal evidence or material to connect the Appellant/ accused with the crime and thereby, the case of the Prosecution fails.

34. In the light of the decisions referred to above and in view of the above discussions and reasons and on an overall analysis of the evidence placed on record, having regard to the probabilities of the case, this Court is of the considered view that the Prosecution has miserably failed to prove the guilt of the accused beyond all reasonable doubts and that the Trial

Court committed grave error in convicting the Appellant/ accused in this case, which lacks legal evidence. Therefore, the impugned judgement of conviction and sentence is liable to be set aside and consequently, the Appellant is entitled for acquittal.

35. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The Appellant is acquitted of the charges levelled against her. The bail bond, if any executed by her, shall stand cancelled and the fine amount, if any paid by her, shall be refunded to her.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Sessions Court (Mahila Court),
Perambalur.
- 2.The Inspector of Police,
Maruvathoor Police Station, Perambalur.
- 3.The Public Prosecutor,
High Court, Madras
- 4.The Judicial Magistrate,
Perambalur.
- 5.The Chief Judicial Magistrate,
Perambalur.
- 6.The Officer in Charge,
SPL.Prision for Women,
Tiruchirappalli.
- 7.The Inspector of Police,
Maruvathoor Police Station,
Perambalur Dist.

+1cc to Mr.A.N.Rajan, Advocate, S.R.No.13306

Cr1.A.No.217 of 2010

VSN II(CO)

RRS (04/04/2019)