

BAIL SLIP

The Petitioner Accused No.Viz; 1.Hariprasanna & Suresh Kumar
2.Vedagiri 3.John Stephon & Suresh Kumar were directed to be
released on bail as per the order of this court dated 05/04/2010
in CrI.MP.No.1 & 1 of 2010 in CrI.A.Nos.226 & 228 of 2010 on the
file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.Nos.226 & 228/2010

1.Hariprasanna
2.Vedagiri
3.John Stephen ... Appellants / A2 to A4 in

CrI.A.No.226/2010

Suresh Kumar ... Appellant / A1
in

CrI.A.No.228/2010

Vs

State rep.by:
The Inspector of Police
V1 Villivakkam Police Station
Chennai-49.

.. Respondent in
both the

appeals

Prayer:- Criminal Appeals filed u/s.374[2] Cr.P.C., to allow the
appeals and set aside the judgment and conviction of the Trial
Court dated 31.03.2010 in SC.No.406/2008 on the file of the
learned Additional District and Sessions Judge, Fast Track Court
No.IV, Chennai and acquit the accused and set them at liberty.

For Appellants in
CrI.A.No.226/2010 : Mr.S.Namasivayam

For Appellant in
CrI.A.No.228/2010 : Mr.M.Sathish Kumar

For Respondent in

both the appeals : Mr.K.Prabakar, APP

COMMON JUDGMENT

- 1.The Criminal Appeals are filed against the judgment of conviction and sentence, dated 31.03.2010 made in SC.No.406/2008 by the learned Additional District and Sessions Judge, Fast Track Court No.IV, Chennai. Totally there are five accused and they stood charged and tried for the commission of the offence under section 306 IPC and the Trial Court, vide impugned judgment dated 31.03.2010, had acquitted A-5, viz., Karthikeyan and however, found the appellants/A-1 to A-4 guilty for the commission of the said offence and convicted and sentenced each of them to undergo 5 years rigorous imprisonment and to pay a fine of Rs.15,000/- each with a default sentence of one year simple imprisonment.
- 2.The case of the prosecution as per the charge sheet filed by the Inspector of Police, Villivakkam Police Station, the respondent herein, is that the deceased Gopinath was engaged in the business of manufacturing Phenyl and Soap Oil in the name of Sri Rasi Chemicals in a portion of his house. He had availed credit facilities from ABN Amro Bank, State Bank of India, ICICI and Kotak Mahindra Bank Limited, apart from other Financiers for the purpose of his business. The appellants/A-1 to A-4 and yet another accused, being Collection Agents, of the above said Banks had visited the house of the deceased at Door No.49, Agathiyar Nagar Extension 5th Street, Ponvizha Nagar, Villivakkam, on the night of 27.09.2007 to collect the outstanding amounts due on the credit cards/personal loan account and that the appellants and the other accused person have abused the victim Gopinath and his family members in filthy language and left the place saying that they would come back on the next day and had threatened to kidnap his wife and children, if the deceased fails to pay the outstanding. Due to the ill-treatment and threat by the appellants and the other accused, the deceased, out of shame and mental agony, had slit his hands with a laser knife and also consumed poison and thereby, committed suicide. On the complaint given by the wife of the deceased, viz., Mrs.G.Vijayalakshmi [P.W.1], a case in crime No.515/2007 came to be registered by the respondent police for the commission of the offences under section 352, 507, 306 IPC. The Inspector of Police, after completion of the investigation, had filed the Final Report against the accused persons for the offence under section 306 IPC.
- 3.The case was taken on file in PRC No.54/2008 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai and the learned Magistrate, in due compliance of section 207 Cr.P.C., furnished the copies of the documents relied on by the

prosecution to the accused. Since the offence under section 306 IPC was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the learned Principal Sessions Judge, Chennai and that the learned Judge had made over to the Trial Court, viz., the Additional District and Sessions Judge, Fast Track Court No.IV, Chennai, in SC.No.406/2008 and necessary charge was 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.19 and also marked Exs.P1 to P12 and 5 Material Objects. No oral evidence was let in on the side of the defence. However, Exs.D1 and D2 were marked on the side of the defence.

4. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313[1][b] Cr.P.C as to the incriminating circumstances found in the evidences 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.
5. The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, acquitted A-5 and however, found A-1 to A-4, the appellants herein, guilty for the commission of the offence under section 306 IPC and awarded punishment, as referred to above, which is challenged in these criminal appeals.
6. The facts of the prosecution, as culled out from the evidences let in before the Trial Court, are as follows:-
 - a) **P.W.1-Vijayalakshmi/ defacto complainant** is the wife of the deceased Gopinath and she had deposed that her husband Gopinath was engaged in manufacturing Phenyl and Soap Oil and for the purpose of his business, he had borrowed loans through Credit Cards/Personal Loan from ICICI Bank, SBI Bank, ABN Amro Bank and Kotak Mahindra Bank. She further stated that her husband had paid the debts regularly and due to slump in business, he had committed default and that the appellants who are the Collection Agents for the respective Banks, had come to her house ; called her husband out of the house and abused him in filthy language and threatened him of dire consequences. She had also deposed that her husband had told them that he would repay money directly to the Bank. At that time, four of the appellants told the deceased to sell his wife and daughter and to repay the amount and also threatened him over phone. P.W.1 had deposed that on 26.09.2007, at about 12.00 Noon, one of the Collection Agents from the Kotak Mahindra Bank came to her house and the deceased asked him to come inside the house ; but the said person had refused to come in and shouted at the deceased in filthy language in the presence of the neighbours and that on the same night, at about 2.30 a.m., on 27.09.2007, her husband, out of mental agony and

frustration, had slit his hand with a laser knife and he fell down on the ground with frothing in his mouth. Immediately, P.W.1 had taken the deceased to KMC Hospital where the victim was declared as 'brought dead'. Thereafter, she had given a complaint to the respondent police, which was marked as Ex.P.1 and that she identified M.Os.1 to 5.

- b) **P.W.2-Master Venkatraj**, the minor son of the deceased Gopinath and P.W.1, had deposed that he was living along with his parents, sister and grandfather at Door No.49, Ponvizha Nagar, Agathiyar Nagar Extension 5th Street, Villivakkam, Chennai and that his father had borrowed money from various Banks for the purpose of his business and that on 27.09.2007, at about 6.30 a.m., the accused persons had come to his house ; abused his father in filthy language and also threatened him over phone and that, consequent upon such instigation, his father committed suicide by consuming poison and slitting his hands with laser knife on the wee hours on 28.07.2007 and he was taken to KMC Hospital where he was declared as 'brought dead'.
- c) **P.W.3-Chandirika**, the minor daughter of the deceased Gopinath and P.W.1 and the sister of P.W.4, had deposed about the occurrence and the incidents that took place prior to her father committing suicide, in the same lines as that of P.W.1 and P.W.2. She had further deposed that on 28.07.2007, the accused had come to the house and the neighbours living nearby, apprehended them and handed over them to police and the police examined them.
- d) **P.W.4-Srinivasan**-father of P.W.1/father-in-law of the deceased Gopinath and Grandfather of P.Ws.2 and 3 had deposed that he is residing along with his daughter's family and that his son-in-law had borrowed loans for development of his business from Financial Institutions and private parties, particularly, from SBI, ICICI, Kotak Mahindra Bank and ABN Amro Bank and that due to rainy season, there was a slump in his business and the deceased was unable to pay the dues regularly and that the accused had come to the house and threatened him. He further deposed that on 27.09.2007, during Noon hours, four persons, who were present in the Court, had come and abused Gopinath for non-payment of due amounts in filthy language, stating that 'cdf;F vjw;F fld;. FLk;gk;. bghz;lhl;o. g [s;is';bfy;yhk; cdf;F vjw;F vd;W rj;jk; nghl;lhh;fs;'. He had further deposed that the said incident took place at about 2.30 p.m., on 27.09.2007 and on the same day, at about 8.30 p.m., the accused came once again and threatened the deceased Gopinath with dire consequences and saying that they will come back again in the morning and left the place. It is his further deposition that his son-in-law felt humiliated and that, about 2.30 a.m., on 28.07.2007,

when his daughter [P.w.1] went to the bedroom, she found her husband lying with cut injuries on both hands and froth from his mouth. Immediately thereafter, the deceased was taken to the Government KMC Hospital, where, after examination, he was declared as '' brought dead''. Thereafter, he had gone to the respondent police and had given a complaint and that, without knowing the death of his son in law, the accused persons came to their house in the morning hours on 28.07.2007 and the public nearby, gathered and apprehended them and handed them over to the police and he had also deposed that his son-in-law committed suicide due to torture and mental agony caused by the accused persons.

- e) **P.W.5-Suresh Kumar**, one of the neighbours living opposite to the house of the deceased, had deposed that the deceased was engaged in the business of manufacturing phenyl, Bleaching Powder and readymade idly flour and that, one month prior to the occurrence, the deceased Gopinath had informed him about the slump in his business and he had further deposed that two days prior to the death of Gopinath, at about 12.35 p.m., the Bank Agents came to the house of the deceased and that P.W.1 was available in the house and the Bank Agents demanded payment of loan and that she had requested them to come after the arrival of her husband/deceased. He had further deposed that two persons came on the next day for collection and that they have abused the deceased and that, P.W.5 went and pacified the situation. It is the further deposition of P.W.5 that on the same day, at about 9.30 p.m., once again the Bank Agents came to the house and abused Gopinath and P.W.5 had attempted to pacify them ; whereas the Bank Agents did not accept it. On the next day, i.e., on 28.07.2007, P.W.5 came to know that the deceased had committed suicide. However, he had not identified the accused persons and thereby, he had been treated hostile.
- f) **P.W.6-Babu** is the neighbour of the deceased living opposite to the house of the deceased. He had deposed that the deceased was engaged in the business of manufacturing soap oil and that the deceased, one month prior to the occurrence, had informed him that his business was not going well. He had further stated that the persons from the Bank are calling him and disturbing him and that they had been coming to the house and abusing him. He had further deposed that on 27.09.2019 at 8.30 p.m., there was some noise near the house of the deceased and when he had gone there, he had seen the crowd of persons standing there and when he enquired, they had told him that they are persons from the bank and he identified the persons and that, on the next day he came to know that the deceased had committed suicide.

- g) **P.W.7-Saravanan** is also a neighbour, living opposite to the house of the deceased. He had deposed that the deceased was living opposite to his house and that, he knew the accused. He had seen the accused on the previous day. On the night prior to the date of occurrence, he had seen the deceased and the deceased had informed him that he was in distress and requested P.W.7 to part with some money and that, when P.W.7 had questioned him, the deceased told him that he had taken loan from the banks and that people from banks are putting pressure on him. Further, P.W.7 had advised him to speak to the bank so that they will give some time for repayment of the loan. He had further deposed that he was not aware as to what had happened to the victim before his death. He deposed that on the next day morning the accused had come to the place of occurrence one by one and that the public nearby, had informed the police that the Agents of the Banks are coming there and that police had come and arrested the accused. He had also deposed that the police arrested A-1 initially and thereafter, the other accused had come one by one and they were also arrested by the police subsequently. He had deposed that the father-in-law of the deceased had informed him that the agents from the banks had threatened his son-in-law/deceased.
- h) **P.W.8-Ranjith** is the photographer and he had deposed that on instructions from the Inspector of Police, Villivakkam Police Station, he had visited the scene of occurrence on 28.09.2007 and taken photographs in a Digital Camera. The **photographs** are marked as **Ex.P.6 Series**.
- i) **P.W.9-Padmanabhan** had deposed that he is running a Collection Agent Firm for and on behalf of ICICI Bank in the name and style as "ABB" and that 13 employees are working under him as Collection Agents to collect the loan amount from the customers of the Bank. He had further deposed that on receipt of phone call from the Bank to collect the loan amount from the person concerned, they will call the concerned person from whom the loan amount is due and only if such person informs them to come and collect the loan amount, then Agents will go and collect the money. He had also deposed that A-2-Hariprasanna was working as a Collection Agent in his Agency and that he had deputed A-2 on 28.09.2007 to go to the house of the deceased to collect the amount due.
- j) **P.W.10-K.T.Irudhayaraj**, had deposed that he is running a Firm in the name of "Business Box House" and is engaged in the business of Collection Agent for ABN Amro Bank. He had also deposed that he used to depute his employees to collect cheque or cash from the borrowers and that A-5-Karthikeyan was working as Collecting Agent/Office boy in his office and that he had deputed him to the house of the deceased. He had also deposed that a sum of Rs.500/- was

collected from the deceased Gopinath towards the outstanding amount and that he do not know as to who had collected the said amount.

- k) **P.W.11-Christopher Teion Samuel** had deposed that he is running a firm the name of Comprehensive Fincom Solution and engaged in the business of collecting information about defaulters from SBI and using his employees for collection of loan amount from the borrowers. He had further deposed that A-1 [Suresh Kumar] was working in his company and he does not know about the death of Gopinath and that he had sent Suresh Kumar [A-1] for collection. Further, he had come to know about the death of Gopinath through newspaper.
- l) **P.W.12-Chowdhary,** had deposed the he is running an institution in the name and style of Sri Credit Bureau for collection of loan amount from the defaulters of ICICI bank and that the details about the borrowers etc., will be received from the Bank and he used to depute his employees to the house or office of the defaulters to collect the amount. He had further deposed that on 28.09.2007, he received information through phone from ICICI Bank to go and collect loan amount from Gopinath based on which, he had deputed A-3-Vedagiri, who was working in his office, for collecting the money and when A-3 had gone to the house of the deceased on 28.09.2007, the public nearby, apprehended him and handed over him to the police and that the Investigating Officer examined him.
- m) **P.W.13-Dr.Krishnamoorthy,** working as the Assistant Director in DNA Division of Forensic Department, Chennai-4, had deposed that on 05.10.2007, he had received four material objects, viz., Bedsheet ; Dhothi, cut-banian and knife, with a requisition letter from the learned 13th Metropolitan Magistrate, Egmore, Chennai in connection with Crime No.515/2007 through the Head Constable No.10469, Villivakkam Police Station ; subjected the same to analysis and detected blood in Item Nos.1 to 4 and that he had sent the balance materials noted in Biol No.449/2007 to the Serology Department for further analysis. The **Biol Report** issued by him is marked as **Ex.P.2.**
- n) **P.W.14-Dr.Vimali Thiayagarajan,** the Scientific Officer attached to DNA Division, Forensic Department, Chennai, at the relevant point of time, had deposed that she had received four blood stained material objects and had subjected the same to analysis and that she had found human blood on M.Os.1 to 3 ; detected the blood group as ''O'' and that no blood group was detected in Item No.4 and that the sample blood was subjected to analysis and she was not able to conclude the blood group, for which, she had issued the **Serology Report** which was marked as **Ex.P.3.** She further deposed that on 03.10.2007, after autopsy of

deceased Gopinath, she received the blood of the deceased and after analysis, she had issued a **Serology Report** in respect of the same, which was marked as **Ex.P.4**.

- o) **P.W.15-Raji**, Head Constable No.10496, had deposed that as per the instructions from the Inspector of Police, Villivakkam Police Station, she handed over the Requisition Letter to the Doctor for conducting the postmortem on the body of the deceased Gopinath and after completion of postmortem, she handed over the body of the deceased to his relatives.
- p) **P.W.16-Nagarajan**, Sub Inspector of Police attached to the respondent police station at the relevant point of time had deposed that on 28.09.2007, when he came back to the Police Station after completing Parade in the morning, he received the death intimation from KMC Hospital relating to the death of the deceased Gopinath. He had immediately rushed to the hospital at around 7.30 a.m., and found the dead body in the Mortuary and that the relatives were available near the Mortuary except the wife of the deceased [P.W.1]. When he enquired about P.W.1, he was informed that she will be coming and hence, he waited for P.W.1 for some time and thereafter, he had gone to the house of P.W.1 and found the door locked and on enquiry, he was informed by the neighbours that the wife of the deceased had gone to the Police Station for lodging the complaint. Thereafter, P.W.16 went to the Police Station at about 4.00 p.m. While he was in the Police Station, P.W.1 came there with her relative and informed that she was not doing well and that was the reason for the delay in lodging the complaint. P.W.1 had informed P.W.16 that due to harassment and torture given by the accused/employees of ICICI, SBI, ABN Amro Bank and Kotak Mahindra Bank, for non-payment of the loan amount, her husband had committed suicide and P.W.16 had received the complaint from P.W.1 under Ex.P.1 and registered a case in Crime No.515/2007 for the alleged commission of the offences under section 352, 306, 507 IPC. The **Printed FIR** was marked as **Ex.P.5** and handed over the CD File to the Inspector of Police for further investigation.
- q) **P.W.17-Dr.S.Kuppusamy**, attached to KMC Hospital during the relevant point of time, received the requisition letter from P.W.15-Head Constable, on 29.09.2007 at about 10.00 a.m., for conducting postmortem on the dead body of the deceased Gopinath and commenced the postmortem at about 10.30 a.m. He found rigor mortis all over the body. The following injuries were noted:-

External injuries:-

[1]An incised wound seen on the right side neck in front of the thyroid cartilage measuring about 3cm L x 0.25cm B x skin depth.

[2]Another incised wound seen in the front of right fore arm measuring 7cm L x 0.5cm B x skin depth and other 8 numbers of superficial incision seen on the right forearm.

[3]Another incised wound seen on the left forearm measuring 6cm L x 1cm B x 1cm D. No other wound or injury seen.

Dissection of Internal Organs:- Hyoid Bone:- Intact. Larynx and Trachea:- Normal and empty. Heart:- Normal. Lungs:- Adherent to chest wall on both side c/s shows pus. Stomach:- contains 50 ml of yellow colour fluid with the smell of insecticide present. Liver, Kidney and Spleen:- Normal c/s congested. Intestine and Bladder:- Empty. Pelvis and Spinal Cord:- Intact. Scalp Skull Membrane:- Intact. Brain:- Normal c/s. Congested.'

Ex.P.6 is the **Postmortem Certificate**. He had collected blood sample and the viscera was sent for chemical analysis. He also received the **Toxicology Report** which was marked as **Ex.P.7** and found the presence of poison, viz., Butyl Hydroxy Toluene, in the stomach and its contents and he had opined that the deceased died due to consumption of poisonous substance stated above and that the deceased died 30 to 31 hours prior to autopsy and the opinion about the time of the death, had not been mentioned in Ex.P.6 and had written in the Case Sheet. The further opinion of the doctor was that the injuries are antemortem injuries and would have been caused by self infliction.

r) **P.W.18-Shanmugam**, the Assistant Director of Forensic Sciences Department, Chennai, at the relevant point of time, had received the viscera of the deceased Gopinath relating to Crime No.515/2007 on the file of Villivakkam Police Station and that, on the same day, he analysed the vital organs and the sample blood and found the presence of Butyl Hydroxy Toluene in the stomach and its contents and with respect to other vital organs, viz., Intestine and contents, Liver and Kidney, Blood and Preservative, he had not detected the said poisonous substance. He further stated that Butyl Hydroxy Toluene and its related compounds are poisonous in nature and issued Ex.P.7 and P.12-Toxicology Reports.

s) **P.W.19-Ravishankar**, the Inspector of Police attached to the respondent Police Station had deposed that on 28.09.2007 when he was working as the Inspector of Police [Crime], he received the CD File with regard to Crime No.515/2007 for the offences u/s.352, 306 and 507 IPC and that he took up the case for investigation and at 4.30 p.m., on 28.09.2007, he despatched the original complaint and FIR to the Court concerned. He went to the scene of occurrence at about 5.00 p.m., and examined the witnesses and recorded their statements. He had prepared the **Observation Mahazar [Ex.P.8]** and a **Rough Sketch [Ex.P.9]** in the presence of

witnesses. He also recovered the material objects from the scene under **Seizure Mahazar [Ex.P.10]**. Thereafter, he came to the Police Station and prepared Form 95 and forwarded the material objects to the Magistrate Court along with a requisition to send the same for chemical analysis. On the next day, i.e., on 29.09.2007, between 8.00 a.m. and 9.30 a.m., he commenced inquest on the dead body of the deceased in the presence of witnesses and prepared the **Inquest Report [Ex.P.11]**. On the same day, at about 5.00 p.m., on receipt of information, he had gone to Thiru.V.Ka Park at Anna Nagar and arrested A-1 to A-4 and came back to the Police Station at 6.00 p.m. Thereafter, he had once again summoned the witnesses to appear before the Police Station and that they have identified A-1 to A-4 as those persons who had come to the house of the deceased prior to the committal of suicide by Gopinath. Thereafter, he sent the accused for judicial remand. A-5 [Karthikeyan] had obtained anticipatory bail and hence, he was not arrested. Thereafter, on completion of investigation and after obtaining opinion from the learned Government Advocate, had filed the Charge Sheet against the accused persons for the offence u/s.306 IPC.

7. The Trial Court, on consideration and appreciation of the oral and documentary evidences and other materials, had convicted and sentenced the appellants/A-1 to A-4 as stated above and hence, these appeals.
8. The learned counsel for the appellants/accused, while assailing the impugned judgment of conviction and sentence, made the following submissions:-
 - a) The conviction and sentence imposed by the learned Trial Judge against the appellant on 31.03.2010 in SC.No.406/2008 is illegal and contrary to the evidence before the Court.
 - b) The Trial Court had erred in convicting the appellants/A-1 to A-4 on omnibus and vague allegations.
 - c) The prosecution has failed to prove the case beyond all reasonable doubts.
 - d) The Trial Court which had acquitted A-5 [Karthikeyan] who stood on similar footing as that of the present appellants/A-1 to A-4, had convicted the appellants/A-1 to A-4 on the basis of the same set of evidence let in by the prosecution.
 - e) The learned Trial Judge had failed to take into consideration the contradictions between the evidence of the witnesses with regard to the occurrence that took place on the previous day, i.e., on 27.09.2007.
 - f) There was a grave delay in lodging of the complaint and registration of FIR and admittedly, the names of the accused do not find place in FIR and that, there is only a general allegation that the Collection Agents belonging to Financial Institutions, had gone and threatened the

victim/deceased Gopinath.

- g) The learned Trial Judge had failed to take into consideration that as per the evidence of P.Ws.1, 4 and 19, there are three complaints given to the respondent police at different point of time. Admittedly, as per the evidence of P.W.1, she went to the respondent police station at about 4.00 p.m., on 28.09.2007 and had given a complaint ; whereas it is the evidence of P.W.4-father of P.W.1 that he went to the respondent police station during morning hours on 28.09.2007 from the hospital and however, it is the evidence of P.W.19 in the cross examination that on 28.09.2007 at about 11.30 a.m., two Advocates had come to the police station and had stated that their client one Gopinath had died and P.W.19 had informed them to give the complaint to the Inspector of Police [Law and Order]. He had further stated that the Advocates have not given any written complaint and that they had given an oral complaint only. Further, as per the evidence of P.W.19 that FIR has been given belatedly after deliberation and contemplation due to the involvement of the Advocates of P.W.1.
- h) Excepting a vague and bald allegation, no evidence has been let in by the prosecution to prove the essential ingredients required to prove the charge for the offence under section 306 IPC. It is submitted that the basic ingredients of section 306 IPC are suicidal death and abetment thereof and that, to constitute abetment, intention and involvement of the accused to aid or instigate the commission of suicide is imperative and any severance or absence of any of these constituents would militate against such indictment and that, remoteness of culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short of the offence of abetment essential to attract section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omissions are the concomitant indices of abetment and when these factors are missing, the appellants cannot be held for the offence.
- i) The Trial Court had erred in convicting the appellants when specifics are lacking in respect of allegations against the appellants.
- j) Further, there is no suicidal note implicating anybody.
9. The learned counsel for the appellants/accused, in support of his contentions, has placed reliance on the following decisions of the Hon'ble Supreme Court of India:-
- A) M.Mohan and others V. The State represented by the Deputy Superintendent of Police** in Criminal Appeal Nos.611 & 612/2011 dated 01.03.2011.
- B) Gurcharan Singh V. State of Punjab** in Criminal Appeal No.1135/2016 dated 02.12.2016.
- C) Shama Parveen Beg and Another V. State of Madhya Pradesh**

and Another in Criminal Appeal No.2753/2017 dated 05.04.2018.

D) M.Arjunan Vs. The State Rep. by its Inspector of Police reported in (2019) 3 Supreme Court Cases 315

10.**Per contra**, Mr.K.Prabakar, learned Additional Public Prosecutor appearing for the respondent/State would submit that the prosecution has proved its case beyond all reasonable doubt by adducing proper and cogent evidence through P.Ws.1 to 6 and that, P.Ws.1 to 4 are, respectively, the wife, son, daughter and father-in-law of the deceased. He would submit that the evidence of P.Ws.1 to 4 has been amply corroborated by P.Ws.5 and 6 who are the neighbours of the deceased and who had seen the accused threatening and abusing the deceased family prior to the date of the victim committing suicide. Learned Additional Public Prosecutor would further submit that it is the evidence of P.W.17-Dr.Kuppusamy that the death of the deceased is due to consumption of poisonous substance and his evidence is categorical that the death of the deceased was due to suicide. Thereby, the Trial Court, on proper appreciation of both oral and documentary evidence, had rightly convicted the appellants/A-1 to A-4 and that the impugned judgment of the Trial Court does not warrant any interference at the hands of this Court and prays for dismissal of these criminal appeals.

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, including the relevant provisions of law and authorities of various Courts.

12.Point for Consideration:-

[1] Whether the prosecution has proved the guilt of the appellants/A-1 to A-4 beyond all reasonable doubt ? ; and

[2] Whether the Trial Court is right in convicting the appellants/accused?

13.This Court has thoroughly scanned through the evidence of P.Ws.1 to 4. The learned counsel for the appellants/A-1 to A-4 pointed out as to the existence of three different complaints at different point of time. Firstly, the complaint given by P.W.1 at the respondent police station at about 4.30 p.m. on 28.09.2007 under Ex.P.1 which was registered as Crime No.515/2007. Secondly, it is the evidence of P.W.4-father of P.W.1/father-in-law of the deceased Gopinath that after the deceased was declared as "brought dead" in the hospital, he went to the respondent police station and had lodged a complaint. Thirdly, it is the evidence of the Investigating Officer, viz., P.W.19, in his cross examination that at about 11.30 a.m., on 28.09.2007, two Advocates of P.W.1 had come to the police station and stated that their client one Gopinath had died. However, this complaint of the Advocates was an oral

complaint. If the complaint given by P.W.1, as per her evidence, is to be believed, then the other complaints said to have been given by the father-in-law of the deceased / P.W.4 and the Advocates, are burked by the prosecution in order to suit their convenience and for the reasons best known to them. The present complaint under Ex.P.1 is nothing but a deliberation and contemplated one. Even in the complaint of P.W.1, there had been no mention about the names of the accused persons and the appellants have been shown as the Bank Agents of ABN Amro Bank, SBI Bank, ICICI Bank and Kotak Mahindra Bank and some mobile numbers had been furnished in the complaint. Further, P.W.1 had mentioned in the complaint that the Agents were looking like rowdies and except that, no other details regarding the identification of the accused had been given. A reading of the complaint under Ex.P.1 reveals that a general and omnibus allegation is given against the accused persons and nothing specific has been stated about the act of any of the persons in particular. Even while deposing before the Court, P.W.1 has not made any specific averment against any persons and a general allegation that Collection Agents belonging to the above said Banks had come and threatened her husband/deceased and that due to mental agony and torture, he had committed suicide.

14. Next comes the arrest of the accused. It is the evidence of P.W.1 that the appellants and the other accused were stated to have come to the scene of occurrence one by one on the date of occurrence, i.e., 28.09.2007, and they were apprehended by the public gathered nearby and were handed over to the police who had arrived there and they arrested on the same day morning. Whereas, it is the evidence of the Investigating Officer, viz., P.W.19 that he had arrested the accused persons at a Park at Anna Nagar on 28.09.2007 at about 4.30 p.m. Thereby, the theory/case projected by the prosecution as to the arrest of the accused persons is doubtful. Further, it is the evidence of P.W.3, the daughter of the deceased that only after the death of her father and that, only after giving complaint to the police, she came to know about the arrival of the Collection Agents to their residence on 28.09.2007. Further, she had stated in her cross-examination that she was not aware as to which employee from which Bank had threatened her father/deceased and that she had deposed only on tutoring by her mother and relatives, her evidence assumes greater significance.

15. The factum of the deceased committing suicide by slitting his hands and by consuming poison, is not disputed. However, it has to be seen as to whether it was the appellants/A-1 to A-4 who had abetted the deceased to commit suicide? In other words, whether the essential ingredients of section 306 IPC, viz., abetment and the intention of the accused to aid or instigate the deceased to commit suicide, is attracted or not?

16. For better appreciation, section 306 IPC reads 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.

CLASSIFICATION OF OFFENCE Punishment— Imprisonment for 10 years and fine—Cognizable— Non-bailable— Triable by Court of Session—Non-compoundable. Comments (i) To attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary; (ii) Two offences under section 302 and section 306 of the Indian Penal Code are of distinct and different categories. The basic constituents of an offence under section 306, IPC are suicidal death and abetment thereof."

17. A reading of the above provision makes it crystal clear that the basic constituents of the offence under section 306 IPC are **sucidial death and abetment**. Though the death of the deceased in this case due to suicide is not disputed, it has to be seen whether the act of the accused/appellants instigated or abetted or aided the deceased to commit suicide? This Court deems it beneficial to refer to the recent decisions of the Hon'ble Apex Court hereunder:

18. In **Gurucharan Singh Vs State of Punjab**, reported in **2017 (1) SCC 433**, the Hon'ble Apex Court has held as follows:

21. Section 306 of the Code prescribes the punishment for abetment of suicide and is designed thus:

"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."

22. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predication 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 of 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.

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 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 the act, and thereby facilitate the commission thereof, is said to aid the doing of the act."

23. 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.

28. The pith and purport of Section 306 IPC has since been enunciated by this Court in **Rahdhir 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 the State of West Bengal 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."

29. 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 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."

30. 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. Fijay Kumar Mahajan (2010) 12 SCC 190."**

19. Further the same view has been taken by the Hon'ble Apex Court in the recent decisions in **M.Arjunan Vs. The State Rep. by its Inspector of Police** reported in (2019) 3 Supreme Court Cases 315 and **Rajesh Vs. State of Haryana** reported in 2019 Supreme Court Cases Online SC 44. , wherein it has been held as follows:

20. In **M.Arjunan Vs. The State Rep. by its Inspector of Police** [cited supra] it has been held as follows:

"8. The essential ingredients of the offence under Section 306 IPC are (i) the abetment: (ii) the intention of the accused to aid or instigate or abet the accused to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC."

21. In **Rajesh Vs. State of Haryana** [cited supra] it has been held as follows:

"9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate by the person charged with the said

offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

10. The term instigation under Section 107 IPC has been explained in Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi) as follows:

"**16.** Speaking for the three Judge Bench in Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cr1) 1088], R.C.Lahoti, J. (as His Lordship then was) said that 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 specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute "instigation" a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" ; "to keep irritating or annoying somebody until he reacts".

11. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation."

22. In this case, the evidence of the witnesses is not clear and cogent as to who among the appellants threatened the deceased and abetted him to commit suicide. The allegations are omni-bus and vague in nature. Further, the evidence is not credible with regard to the facts regarding arrest. As per the evidence of the witnesses, the appellants were arrested near the house of the deceased one by one, but whereas as per of the evidence of the Investigating Officer, they were staed to be arrested at some other place.

23. The Hon'ble Apex Court in the decision reported in **2019 [2] SCC [Cr1.] 300 [Digamber Vaishnav and Another V. State of Chhattisgarh]**, had held that:-

'Criminal Trial-Proof-Generally-Fundamental Principles-Held, one of the principles is, that burden of proof squarely rests on prosecution and that general burden never shifts-There can be no conviction on basis of surmises and conjectures or suspicion howsoever grave it may be-Strong suspicion, strong coincidences and grave doubt cannot take place of legal proof.

- Onus of prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by defence at best, be considered as additional circumstance, if other circumstances unfailingly point to the guilt - Suspicion - Held strong suspicion, strong coincidences and grave doubt cannot take place of legal proof.' {Paras 14, 15, 17 and 18}

24. This Court, on an entire analysis and consideration of the evidence available on record and upon taking into consideration the decision of the Hon'ble Apex Court [cited supra], is of the view that the essential ingredients of abetment, viz., intention and involvement of the accused to instigate or aid commission of suicide is imperative and whereas, the said ingredients are lacking in this case and the prosecution has not come with proper and sufficient evidence to prove that the deceased had committed suicide due to the instigation or abetment on the part of the appellants/A-1 to A-4 and the absence of any of these constituents would militate against the indictment. Hence, this Court is of the considered view that the prosecution has failed to prove its case beyond reasonable doubt.

25. Accordingly, the criminal appeals are **ALLOWED** and the **conviction** imposed by the Trial Court on the appellants/accused in SC.No.406/2008 vide impugned judgment dated 31.03.2010 is hereby **set aside** and the appellants/A-1 to A-4 are acquitted of

the charge levelled against them. Bail bond if any, executed by them shall stand discharged. Fine amount, if any paid, shall be refunded to them.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

AP

To:

- 1.The Additional District and Sessions Judge,
Fast Track Court No.IV, Chennai.
- 2.The Principal District and Sessions Judge
Chennai.
- 3.The Chief Metropolitan Magistrate
Chennai.
- 4.The X Metropolitan Magistrate
Egmore, Chennai-8.
- 5.The Inspector of Police
V1 Villivakkam Police Station
Chennai-49.
- 6.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.M.Sathishkumar Advocate sr53773
+3 ccs to M/s.S.Namasivayam Advocate sr53154

CrI.A.Nos.226 & 228/2010

pr(co)
aa09/09/2019