

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P No.16295 of 2017
and
Crl.M.P.Nos.10071 and 10072 of 2017

R.Marimuthu

... Petitioner/Accused

Vs.

State,
Inspector of Police,
Paramathi Police Station,
Namakkal.

(Ref.Crime No.275 of 2015 dated 22.11.2015)

...Respondent/Complainant

Prayer :Criminal Original Petition filed under Section 482 of Criminal Procedure Code, directing to call for records, in S.C.No.65 of 2017 on the file of Fast Track Mahila Court, Namakkal and quash the same as against the petitioner.

For Petitioner : Mr.A.Ramesh
Senior counsel
for Mr. BA.Sujay Prasanna

For Respondent : Mr.C.Raghavan
Government Advocate(Crl. Side)

ORDER

This petition has been filed seeking to quash the Criminal proceedings pending before the Fast Track Mahila Court, Namakkal, in S.C.No.65 of 2017.

2. The case of the prosecution is that the petitioner had developed a relationship with deceased named Tamilselvi. One month prior to the date of occurrence, the petitioner had borrowed a sum of Rs.1,00,000/- from the deceased Tamilselvi. This amount was demanded by Tamilselvi on 20.11.2015 from the petitioner. The petitioner was said to be in an inebriated state and he had shouted at the deceased as follows:

“ ‘இப்போது பணம் தரமுடியாதுடி தேவடியா
நீ செத்து தொலை நாயே மு தேவி’ ”

3.The above words that were uttered by the petitioner, had caused so much mental turmoil to the deceased and that after two days from the date of incident, she took the extreme step of committing suicide by hanging.

4.Mr.A.Ramesh the learned Senior Counsel appearing on behalf of the petitioner submitted that even if the prosecution case is taken as it is, no offence is made out under Section 306 of IPC. The learned Senior counsel submitted that the words uttered by the petitioner was in a fit of anger, without any intension and without knowing the consequences that will actually follow the utterance of the said words and hence no offence under Section 306 of IPC has been made out. The learned Senior counsel further submitted that the incident had taken place on 20.11.2015 and the deceased had committed suicide only on 22.11.2015 and this is also one more ground to establish that no offence has been made out under Section 306 of IPC.

5.The learned Senior counsel in order to substantiate his arguments relied upon the judgment of this Court in Crl.O.P.No. (MD) No.15407 of 2016, Crl.M.P.(MD) Nos.7288 and 7289 of 2016 reported in MANU/TN/5933/2018.

6.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent police submitted that the words uttered by the petitioner abetted the commission of suicide by the deceased. The learned counsel further submitted that even though the deceased had committed suicide two days after the date of incident, that by itself will not take away the case from Section 306 of IPC. The Learned Government Advocate submitted that if the words uttered by the petitioner had a sustained effect on the deceased, the suicide committed even after two days, will come well within the definition of abettment .

7. This Court has carefully considered the submissions made on either side and perused the materials available on record.

8. The only material that is available as against the petitioner are the words that were uttered by him against the deceased. The words that were uttered has been extracted supra. The question is as to whether these words are enough to make the petitioner to undergo the ordeal of trial, for the offence under Section 306 IPC, is to be considered.

10.It will be useful to rely upon the judgement cited by the learned Senior Counsel in this regard.

11.This Court in the case of [S.A.Margaret Angel and Others] reported in MANU/TN/5933/2018 has held as follows:-

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 that 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 306IPC 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 Aanda Sekaran Vs.State by Inspector of Police, K1 Sembiam Police Station, Chennai reported in MANU/TN/7643/2006: 2007-1-L.W.(Crl)163. The relevant portions are extracted hereunder:-

A Sensitive wife, aggrieved by the ordinary words, said to have been uttered by the husband 'நினைந்தால் இரு அல்லது செத்துவிடுவா' - 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 306IPC or compelling

the Court to infer the abutment as contemplated under law. P.W.2 is (was) under the custody of the maternal grandfather or grand mother. 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 abutment. Assuming that the oral evidence of P.W.2 is true as said above, it fails in standard to attract and instigation which is primarily needed for abutment.

14.This Court has also considered the similar issue in Sekar Vs. State by Inspector of Police, Tiruchengood police station, Namakkal District reported in MANU/TN/1539/2011 : (2011) 3MLJ (Cr1) 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 (Cr1.) 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 abutment to commit suicide as enshrined under Section 306I.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 MANU/GJ/2014/1996 : 1997 Cr1.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 of Justice Sudanthiram) in Rukmani/ Vs State represented by the Sub Inspector of Police reported in MANU/TN/0582/2008 : 2008(2) L.W.(Cr1) 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 Hon'ble Supreme Court in *Sontui Rama Krishna Vs Sonti Shanti Sree* and 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 abatement. 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.''

12. The above judgement has taken into consideration all the earlier judgements of the Hon'ble Supreme Court. Mere utterance of the word ('go and die') by itself will not constitute an abatement. With regard to the fact that as to whether the petitioner had beaten the deceased on her back, on the date of incident, it will be relevant to make a reference to the post mortem report which has been placed before this Court. The post mortem report does not reveal the fact that there was any external injury found on the back of the deceased.

13. In view of the above, this Court does not find any materials to sustain the charge under Section 306 of IPC against the petitioner. The continuation of the proceedings against the petitioner will amount to an abuse of process of law and it requires interference of this Court under Section 482 of Cr.P.C.

14.In the result, the proceedings in S.C.No.65 of 2017 on the file of Fast Track Mahila Court, Namakkal is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

vsn/mpa

To

- 1.The Inspector of Police,
Paramathi Police Station,
Namakkal.
- 2.The Public Prosecutor
High Court of Madras
3. The Fast Track Mahila Court,
Namakkal

+2cc to Mr.BA.Sujay Prasanna, Advocate SR.No.64439

Cr1.O.P No.16295 of 2017

VG II (CO)
GMY(29/08/2019)