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Bail Slip

Appellant/Accused via., Pon Selvan, S/o.Mookkandi, was already released on bail vide this court order dated 15.04.2009 and made in MP(MD).1/2012 in Crl A(MD)3 of 2009.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.(MD)No.3 of 2009

Pon Selvan ... Appellant/Accused

Vs.

The State represented by,
The Inspector of Police,
Puthiyamputhur Police Station,
Thoothukudi District.
(Crime No.7 of 2007) ... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374 Cr.P.C., against the judgment and conviction rendered by the learned Additional Sessions Judge (Fast Track Court No.II), Thoothukudi, Thoothukudi District in S.C.No.229 of 2008 vide his judgment dated 19.12.2008 by convicting the Appellant under Section 306 IPC and sentenced him to undergo 10 years R.I. and to pay a fine of Rs.1,000/- in default to under go six months R.I.

For Appellant : Mr.R.Anand
For Respondent : Mr.R.Anandaraj,
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment and conviction rendered by the learned Additional Sessions Judge (Fast Track Court No.II), Thoothukudi, Thoothukudi District, in S.C.No.229 of 2008, vide his judgment, dated 19.12.2008, by convicting the Appellant under Section 306 of IPC and sentencing him to undergo 10 years R.I. and to pay a fine of Rs.1,000/-, in default, to under go six months R.I.

2. The case of the prosecution, in brief, is that on 02.02.2007 at 8.00 a.m., P.W.1 went to Social Welfare Officer, Thoothukudi, for

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obtaining certain Government Monetary Relief and when she returned back at 10.15 a.m. and on her en-route, she was informed that the deceased has committed suicide by self-immolation and the appellant has taken the deceased to the Government Hospital. Immediately, P.W.1 rushed there, where she found her daughter died, on account of burn injuries.

3. P.W.1, mother of the deceased, given Ex.P1 – Complaint, as against the appellant, which was initially registered as suspicious death, under Section 174 of Cr.P.C., on 02.02.2017 at 3.45 p.m, by P.W.10, the Sub Inspector of Police. Later, based on the investigation, the case was altered into Sections 498(A) and 306 of IPC. After investigation, the respondent police laid a charge sheet, before the learned Judicial Magistrate No.1, Thoothukudi. Since the offences are triable by the Sessions Court, the learned Magistrate committed the case to the Court of Sessions.

4. On appearance of the appellant / accused, the substance of the allegation was put to the appellant / accused and he was questioned. The charges under Sections 498(A) and 306 of IPC were framed against the appellant and were read over and explained to him and the appellant denied the same as false.

5.In order to prove the case of the prosecution, before the trial Court, during the trial, the prosecution examined as many as 16 witnesses as P.Ws.1 to 16 and marked 14 documents as Exs.P1 to P14, besides 3 material objects as M.Os. 1 to 3. No oral and documentary evidence were let in on the side of defence.

6. After trial and hearing the arguments made on either side and perusal of the documents, the Trial Court, came to a conclusion that the prosecution has proved the guilt of the accused beyond reasonable doubts and proceeded to convict and sentence the accused for an offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two months. Challenging the said conviction and Judgement of the learned Additional Sessions Judge (Fast Track Court No.II), Thoothukudi, the present Criminal Appeal has been filed before this Court.

7.The learned counsel appearing for the appellant would submit that there is no materials to show the instigation, which leads the deceased to commit suicide and there is no suicide note. The earliest document viz., FIR does not contain any allegation, as if the appellant has tortured and humiliated the deceased, when she had been in marital life. P.W.1 – who is the mother of the deceased, in her complaint simply referred that there was fight frequently bounced upon between the appellant and the deceased.

8. Arguing further, the learned counsel would submit that P.W.1 and P.W.2 are interested witnesses and their testimonies have

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to be dealt with great care, as what was spoken to in the complaint has been deposed by P.W.1 as an improved version in the Court. The evidence of P.W.2 cannot be relied upon, since she is not residing with the deceased and P.W.1. Further, P.W.14, the Revenue Divisional Officer, after enquiry, has found that neither on the prior day nor on the day of occurrence, there had been quarrel taken place between the appellant and the deceased.

9. Adding further, the learned counsel submitted that in this case, the materials placed by the prosecution is not sufficient to convict the appellant, under Section 306 IPC. In support of his contention, the learned counsel placed reliance on the Judgments of Hon'ble Supreme Court in ***Madan Mohan Singh Vs. State of Gujarat and Another*** reported in ***(2010 (8) SCC 628)*** ; in ***Gurcharan Singh Vs. State of Punjab*** reported in ***(2017 (1) SCC 433)*** and in ***Saju Alias Sanjay Singh Sengar Vs. State of M.P.,*** reported in ***(2002 (5) SCC 371).*** The learned counsel, therefore, submitted that without a positive act on the part of the accused to instigate or aid the deceased in committing suicide and without any material to substantiate the same, the appellant / accused cannot be held liable for the offence of abetment to commit suicide and thereby, the conviction imposed on the appellant cannot be sustained.

10. The learned Additional Public Prosecutor appearing for the State submitted that due the harassment made by the appellant, the wife of the accused committed suicide, by pouring kerosene and set fire herself. PW.1 is the mother of the deceased and based on the statement given by the mother, the respondent police registered a case. After investigation, it has been found that the appellant committed the offence under Sections 498(A) and 306 IPC.

11. It is the further submission of the learned Additional Public Prosecutor that the appellant also scolded the sister of the deceased in filthy language. He also ill-treated her family members. The Revenue Divisional Officer's inquest report also clearly shows that the deceased was died due to harassment made by the appellant. Further, from the evidence of P.Ws.1 to 3 and the report of the Revenue Divisional Officer, it is clear that the prosecution proved its case beyond reasonable doubt and hence, he prayed for dismissal of this appeal.

12.This Court consciously considered the rival submissions and perused the materials on record.

13. Now, what needs to be seen is that whether the prosecution has established the charge as against the appellant beyond reasonable doubt and whether the trial Judge has rightly appreciated and analyzed the evidence on record and convicted the accused.

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14. In order to bring home the guilt of the accused, the prosecution is bound to establish that the deceased committed suicide and that the accused abetted / instigated the deceased to commit suicide and thereby, the essential ingredients for the offence under Section 306 IPC are i) the victim committed suicide ii) the accused abetted the suicide and iii) the intention of the accused to aid or instigate or abet the victim to commit suicide. Admittedly, the prosecution proved the case that the deceased committed suicide, through the witness of P.W.12, Doctor, who conducted postmortem on the deceased, which would reveal that the deceased died only due to burn injuries and the evidence of P.W.14, Revenue Divisional Officer would also reveal the that the deceased was tortured and beaten by the accused, which would lead to the deceased to commit suicide, by pouring kerosene and set fire herself. Though PW1 to PW3 are relatives that may not be the sole reason to discard the evidence of them. In this case, this Court does not find any reason to discard the evidence of PW1 to PW3. The discrepancies are only due to illiteracy and not due to intentional improvement. The above facts clearly proved that the prosecution has proved by cogent evidence that the accused abetted the deceased to commit suicide and he had an intention to aid or instigate or abet the victim to commit suicide and the trial Court correctly convicted the appellant.

15. The Judgments relied on by the learned counsel for the appellant are not relevant to the facts of the present case. Furthermore, this Court is not inclined to believe the defence taken by the appellant, as that of the trial Court. Though, this Court does not find any reason to interfere with the Judgment of the Court below, considering the facts and circumstances of the case, this Court is of the considered view to modify the sentence to 7 years RI instead of 10 years RI.

16. In the result, the conviction imposed on the appellant / accused under Section 306 IPC is confirmed, but the sentence is modified into 7 years RI and to pay of fine of Rs.1,000/- instead of 10 years RI.

17. It is seen that the appellant is on bail and hence, the trial court is directed to secure the custody of the appellant / accused forthwith to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Additional Sessions Judge (Fast Track Court No.II),
Thoothukudi, Thoothukudi District.

2.The Judicial Magistrate No.I, Thoothukudi.

3.The Chief Judicial Magistrate, Thoothukudi District.

4.The Inspector of Police,
Puthiyamputhur Police Station,
Thoothukudi District.

5.The Superintendent, Central Prison,
Palayamkottai, Tirunelveli District.

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

7.The Record Clerk,(2 Copies)
Vernacular Section,
High Court, Madurai.

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27.07.2019

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