

**Bail Slip**

The Appellant/Accused namely, Karuppaiah, S/o.Ponnaiah, in Crl. A(MD)No.218 of 2011 was released on bail vide the Order of this Hon'ble Court dated 07.09.2011 made in MP(MD)No.1 of 2011 in Crl.A (MD)No.218 of 2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.218 of 2011

Karuppaiah

... Appellant/Accused(Single)

Vs

State represented by,
Inspector of Police,
Usilampatti Town Police Station,
Cr.No.705/2009,
Madurai District

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records from the lower Court and to duly set aside the Judgment passed by the Additional Sessions Judge, Fast Track Court No.II, Madurai, Madurai District in S.C.No.144 of 2010, dated 30.06.2011.

For Appellant : Mr.V.Kathirvelu

Senior Counsel
for Mr.K.Prabhu

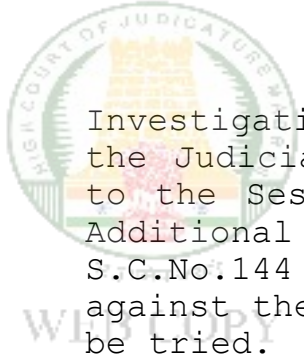
For Respondent : Mr.A.Robinson

Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offence under Section 306 of IPC and sentenced to undergo ten years rigorous imprisonment, vide Judgment dated 30.06.2011 in S.C.No.144 of 2010 on the file of the Additional Sessions Judge/Fast Track Court No.2, Madurai.

2.The prosecution case is that the appellant was keeping the deceased kamayee illegally. They were virtually living as husband and wife. While so, on 24.10.2009, at about 11.00 p.m., the appellant picked up quarrel with the said Kamayee. Angered by the imputation of Kamayee that the appellant was having relationship with others, the appellant set fire to Kamayee. The said Kamayee suffered extensive burn injuries. She was admitted to the Government Rajaji Hospital, Madurai. The treatment given to her was not successful and on 26.10.2009, she succumbed to the injuries at about 12.20 p.m. A case of murder was registered against the appellant by the Inspector of Police, Usilampatti Police Station.



Investigation was conducted and the final report was filed before the Judicial Magistrate No.1, Usilampatti. The case was committed to the Sessions Court in P.R.C.No.7 of 2010 and made over to the Additional Sessions Court/Fast Track Court No.2, Madurai in S.C.No.144 of 2010. Charge under Section 302 of IPC was framed against the appellant. The appellant denied the same and claimed to be tried. The prosecution examined 16 witnesses and marked Ex.P1 to Ex.P18. M.O.1 to M.O.7 were marked. The learned trial Judge, after a detailed consideration of the evidence on record, acquitted the appellant of the offence under Section 302 of IPC, but then, found him guilty of the offence under Section 306 of IPC and sentenced him to undergo 10 years rigorous imprisonment. Questioning the same, this appeal has been filed.

3.The learned Senior Counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to reverse the impugned Judgment.

4.Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not warrant any interference.

5.I carefully considered the rival contentions and perused the evidence on record.

6.As rightly pointed out by the learned Senior Counsel appearing for the appellant, all the material witnesses turned hostile and did not support the prosecution case. The prosecution case essentially rests on the dying declaration given by Kamayee vide Ex.P8. The said dying declaration was given before the Judicial Magistrate No.1, Madurai who was examined as P.W.13. Even if the said dying declaration is accepted in toto, it does not establish the charge under Section 306 of IPC. Kamayee had only stated before the Magistrate that on the fateful night, the appellant had beaten her. Unable to bear the same, kamayee set fire to herself. Kamayee would of-course blame the appellant Karuppaiah for her act. Now the question that arises for consideration is whether on that basis, the appellant can be fastened with penal liability under Section 306 of IPC. On a recent decision of the Honourable Supreme Court in **Crl.A.No.93 of 2019 (Rajesh Vs. State of Haryana)**, it was held as follows:-

'7. It is necessary to refer to Section 306 IPC and Section 107 IPC which reads as under:

'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.

107. Abetment of a thing.A person abets the doing of a thing, who First.Instigates any



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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 thing."

8. 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 the commission of suicide. Therefore, the act of abetment 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. (See *Amalendu Pal alias Jhantu v. State of West Bengal*).

9. The term instigation under Section 107 IPC has been explained in *Chitresh Kumar Chopra v. 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 (Cri) 1088] , R.C.

Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do (2010) 1 SCC 707 (2009) 16 SCC 605: (2010) 3 SCC (Cr1.) 367 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



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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 goading 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.''.

7. Applying the principles laid down by the Hon'ble Apex Court in the aforesaid decision, one has to necessarily come to the conclusion that the appellant cannot be charged with having abetted the commission of suicide by Kamayee. It is true that the appellant had beaten her. From this one cannot come to the conclusion that the appellant intended that Kamayee should commit suicide. This Court must take note of the social back ground of the parties. The appellant is running a small shop. Kamayee was a folk dancer. Such conduct cannot be said to be unusual. Therefore, I have no hesitation to set aside the conviction of the appellant for the offence under Section 306 of IPC, but then, one can see that the appellant had caused hurt to the deceased Kamayee. He had beaten her. Kamayee would clearly stated that in her dying declaration, it was the appellant Karuppaiah who was responsible for her death. This Court can safely assume that the appellant must have beaten her severely, due to which, she committed suicide. The appellant is therefore found guilty of the offence under Section 323 of IPC. The said offence is punishable upto one year imprisonment. In this case, the appellant had been in prison for about 136 days. Therefore, the sentence of imprisonment is modified to the period already undergone.

8. With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Additional Sessions Judge, Fast Track Court No.II,
Madurai, Madurai District.

2.The Principal Sessions Judge, Madurai.

3.The District Munsif cum Judicial Magistrate No.I,
Usilampatti.

4.The Chief Judicial Magistrate, Madurai District.

5.The Inspector of Police,
Usilampatti Town Police Station,
Madurai District.

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

7.The Superintendent, Central Prison, Madurai.

Copy to: The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to M/s.K.PRABHU, Advocate (SR-77583[F] dated 25/07/2019)

Crl.A. (MD) No.218 of 2011
25.07.2019

CS(10.09.2019) 5P 11C