



BAIL SLIP

The Appellant/Accused Manikumar S/o.Pakkiri were enlarged on bail in MP(MD)1 of 2012 in Crl.A (MD)No.149 of 2012 by this dHon'ble Court on 23.04.2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.149 of 2012

Manikumar

... Appellant/Accused No.1

Vs

The Inspector of Police,
Vikramasingapuram Police Station,
Tirunelveli District.
(Crime No.287 of 2009)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 (2)of Cr.P.C., to set aside the conviction and sentence passed against the appellant by the learned Sessions Judge/Mahila Court, Tirinelvei in S.C.No.375 of 2010, dated 12.07.2012 and acquit the appellant.

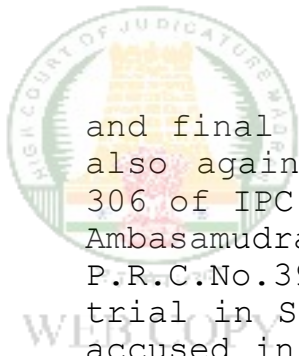
For Appellants : Mr.N.Vijayarajan
for Mr.N.C.Ashok Kumar

For Respondent : Mrs.S.Bharathi
Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offences under Sections 498A and 306 of IPC and sentenced to two years rigorous imprisonment and five years rigorous imprisonment respectively, vide Judgment dated 12.07.2012 in S.C.No.375 of 2010 on the file of the Mahila Court, Tirunelveli.

2.The case of the prosecution is that the appellant was married to one Manimegalai on 11.12.2005 and that the appellant was continuously treating his wife cruelly. As a result, on 18.10.2009, Manimegalai committed suicide by hanging herself. In this regard, P.W.1-Muthu Lakshmi/Mother of the deceased, gave a statement, vide Ex.P1 before the Vikramasingapuram Police Station on 18.10.2009 itself. Based on the same, Ex.P10-FIR in Crime No.287 of 2009 was registered under Section 174 of Cr.P.C. Investigation was conducted



and final report came to be laid not only against the appellant but also against his parents for the offences under Sections 498A and 306 of IPC. Final report was filed before the Judicial Magistrate, Ambasamudram. The case was committed to the Sessions Court in P.R.C.No.39 of 2010 and it was made over to the Mahila Court for trial in S.C.No.375 of 2010. Charges were framed against the three accused in respect of the said two offences. The accused pleaded not guilty to the charges and claimed to be tired. The prosecution examined 17 witnesses and marked Ex.P1 to Ex.P10. On the side of the accused, no evidence was adduced. The learned trial Judge, by the impugned Judgment, acquitted the parents of the appellant, but convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal came to be filed.

3.At the very out set, the learned counsel appearing for the appellant submitted that having regard to the evidence on record, he would not challenge the finding of guilt in respect of the offence under Section 498 A of IPC. He however wanted this Court to acquit the appellant in respect of the offence under Section 306 of IPC. He would only plead that a male child was born through wedlock and that the child has been brought up only by the appellant. He therefore wanted this Court to modify and reduce the sentence to the period already undergone.

4.Per contra, the learned Government Advocate (Crl.side) appearing for the respondent would submit that the impugned Judgment does not warrant any interference.

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

6.P.W.1 is the mother of the victim. P.W.2 is the uncle of the deceased. P.W.3 is the another relative. P.W.4 turned hostile. P.W.5 is the sister of the deceased. P.W.6 is not a material witness. P.W.7, P.W.8 and P.W.9 turned hostile. P.W.10 is the appellant's relative. P.W.11 is the postmortem Doctor. P.W.12 is the forensic expert. P.W.14 is the attesting witness in the Observation Mahazar. P.W.15 is the Investigating Officer. P.W.16 is the Revenue Divisional Officer, who conducted the inquest. P.W.17 was the Inspector of Police, who registered the FIR.

7.A reading of the testimony of the main witnesses namely P.W.1, P.W.2, P.W.4 and P.W.5 would indicate that the relationship between the appellant and his wife was under considerable strain. The appellant used to express his grievance that his wife did not bring sufficient dowry. P.W.1 had further deposed that her daughter was not even fed properly. P.W.2 who is the uncle of the deceased, also deposed that the appellant would quarrel with the deceased often and that even for Deepavali, he did not buy her new clothes.



8. A careful reading of the testimony of the relative of the deceased would only show that the appellant had treated his wife cruelly. But one cannot come to the conclusion there from that the appellant intended the death of the deceased. If the deceased unable to bear the matrimonial stress, committed suicide, the appellant cannot be blamed for the same. A recent decision of the Honourable Supreme Court in **Crl.A.No.93 of 2019 (Rajesh Vs. State of Haryana)** 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 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*



9. The term instigation under Section 107 IPC has been explained in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*² as follows:

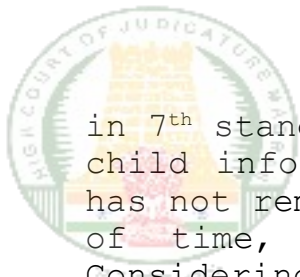
'16. Speaking for the three-Judge Bench in *Ramesh Kumar case* [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , R.C.

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 (Crl.) 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 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.'

9. Applying the principles laid down in the above decision, one can come to the conclusion that the charge under Section 306 of IPC is not at all made out. Therefore, the conviction and the sentence imposed on the appellant by the trial Court for the offence under Section 306 of IPC is set aside.

10. The evidence on record clearly points out to the guilt of the accused for the offence under Section 498 A of IPC. The appellant's counsel rightly does not challenge the conviction imposed on the appellant for the said offence. He only pleads for modification of the sentence. The appellant's counsel submitted that more than ten years have elapsed after the occurrence. Of-course, mere lapse of time cannot be said to be a mitigating circumstances. But then, the boy born to the deceased through the appellant is only with the appellant. This Court called upon the appellant to produce his child before me. The boy Mathavan is now



in 7th standard and is studying in Thirunagar School in Madurai. A child informed me that he is only with his father. The appellant has not remarried. If the appellant is sent to prison at this point of time, the child will be literally left in the lurch. Considering the fate of the child, the appellant is not sent to prison.

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11. I am of the view that the sentence of imprisonment imposed on the appellant for the offence under Section 498 A of IPC can be modified. But then, this Court felt that the appellant should be put on terms. The mother-in-law of the appellant had stated that the house owned by her was settled in favour of the appellant. The appellant through his counsel has given a solemn undertaking that he would have the document executed so as to convey the title in favour of P.W.1-Muthu lakshmi. He would also hand over the physical possession of the property to her. The appellant undertakes to complete the formalities within a period of eight weeks from the date of receipt of a copy of this order. The respondent police are directed to inform P.W.1-Muthu Lakshmi that the property conveyed by her to the appellant Manikumar will be re-conveyed to her.

12. Recording the undertaking of the appellant, this Court even while sustaining the conviction for the offence under Section 498 A of IPC, modifies and reduces the sentence of imprisonment to the period already undergone. The conviction and sentence imposed on the appellant under Section 306 of IPC is set aside. The conviction imposed on the appellant under Section 498 A of IPC is confirmed. However, the sentence of imprisonment is modified to the period already undergo by him.

13. This criminal appeal is partly allowed. The fine amount, if any, paid by him shall be refunded forthwith. The bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.-Do- Thro The Chief Judicial Magistrate, Tirunelveli.



2.The Judicial Magistrate, Ambasamudram, Tirunelveli District.

3.The Sessions Judge/Mahila Court, Tirinelvei.

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

5.The Inspector of Police,
Vikramasingapuram Police Station,
Tirunelveli District.

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

+1 CC to Mr.N.C.ASHOK KUMAR, Advocate(SR-81044[F] dated
09/08/2019)

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09.08.2019

VB(21.02.2020) 6P 8C