



BAIL SLIP

The Appellant/A1 Accused viz., namely Arumugam @ Ari. S/o.Senthil Konar, was released on bail as per order of this Court dated 02.06.2011 and made in Crl.M.P.(MD)No.1/2011 in Crl A(MD) No.126/2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.126 of 2011

Arumugam @ Ari

... Appellant/Accused 1

Vs.

State:

The Inspector of Police,
Thisayanvilai Police Station,
Tirunelveli District.

(Crime No.111 of 2006)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records in S.C.No.329 of 2008, on the file of the Sessions Court Section, Mahila Court, Tirunelveli, dated 01.04.2011 and set aside the same.

For Appellant : Mr.T.A.Ebenezer

For Respondent : Mr.A.Robinson

Govt. Advocate (Crl. Side)

JUDGMENT

The appellant was convicted for the offence under Section 306 of I.P.C. and sentenced to seven years rigorous imprisonment and also levied with fine of Rs.5,000/- by the learned Mahila Court, Tirunelveli in S.C.No.329 of 2008. Questioning the same, this criminal appeal has been filed.

2.The charge against the appellant is that on 24.05.2006 at about 10.00 p.m., the appellant and one Perumal abused the deceased/Patchiammal in filthy language. As a result, Patchiammal hanged herself at about 11.00 p.m. on the same day.

3.The case of the prosecution is that even though her husband and others rescued her, she could not be saved and she died little later. In this regard, Crime No.111 of 2006 was registered on the file of Thisayanvilai Police Station under Section 174 of Cr.P.C. The alteration report was filed on 15.11.2006. After examining the prosecution witnesses and recording their statements under Section 161 of Cr.P.C. and after completing the other formalities, final



report was filed before the learned Judicial Magistrate, Nanguneri. The case was committed to Sessions Court in P.R.C.No.52 of 2006 and made over to the Mahila Court, Tirnelveli in S.C.No.329 of 2008.

4.Two persons, namely., the appellant herein and one Perumal were arrayed as accused. Charges were framed against them. They pleaded not guilty and claimed to be tried.

5.The prosecution examined as many as 11 witnesses and marked Exs.1 to 8. On the side of the accused no evidence was adduced.

6.The learned Trial Judge by judgment dated 01.04.2011 acquitted the second accused/Perumal but convicted the appellant/A1 as mentioned above. Challenging the same, this criminal appeal has been filed.

7.The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the impugned judgment passed by the learned Trial Judge convicting and sentencing the appellant does not warrant any interference as the prosecution proved its case beyond reasonable doubt.

8.The learned counsel appearing for the appellant wanted this Court to reverse the judgment of the Trial Court for the reasons set out in the memorandum of grounds.

9.I carefully considered the rival contentions and perused the evidence on record. The specific case of the prosecution is that the appellant herein abused the deceased/Patchiammal in filthy language and threaten to shame her. The offending words were uttered by the appellant at 10.00 p.m. on 24.05.2006. It is not in dispute that Patchiammal hanged herself at about 11.00 p.m. on the same day. Now the only question that arises for consideration is whether the appellant can be said to have abated the commission of suicide by Patchiammal.

10.The prosecution examined P.W.1 to P.W.3 as eye witnesses for the occurrence said to have taken place on 24.05.2006 at 10.00 p.m. P.W.1 is the husband of the deceased. P.W.2 is the younger brother of the deceased. P.W.3 is the father of the deceased. While P.W.1/husband would stick the prosecution case, he did not speak about presence of P.W.2 as well as P.W.3. P.W.2 as well as P.W.3 as already pointed out are younger brother and father of the deceased respectively. Both would state that A1 was drunk during the relevant time. One under the influence of liquor can be irresponsible or reckless. If on account of the words uttered by a drunken person, the deceased had taken the extreme step of committing suicide, then her reaction can only be said to be that of a very hypersensitive person.

11.The Hon'ble Supreme Court in the decision reported in **AIR 2019 SC 478 (Rajesh vs. State of Haryana)** held as follows :

"8.Conviction Under Section 306 Indian Penal Code



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 Indian Penal Code, 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 Indian Penal Code. (See *Amalendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707).

9. The term instigation Under Section 107 Indian Penal Code has been explained in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605: (2010) 3 SCC (Crl.) 367) as follows:

"16. Speaking for the three-Judge Bench in *Ramesh Kumar* case [MANU/SC/0654/2001 : (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 "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" (see *Concise Oxford English Dictionary*); "to keep irritating or annoying somebody until he reacts" (see *Oxford Advanced Learner's Dictionary*, 7th Edn.).

10. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (See *Praveen Pradhan v. State of Uttaranchal* : (2012) 9 SCC



734).

11.We are of the opinion that the evidence on record does not warrant conviction of the Appellant Under Section 306 Indian Penal Code. There is no proximity between the Panchayat held in September, 2001 and the suicide committed by Arvind on 23.02.2002. The incident of slapping by the Appellant in September, 2001 cannot be the sole ground to hold him responsible for instigating the deceased to commit suicide. As the allegations against all the three Accused are similar, the High Court ought not to have convicted the Appellant after acquitting the other two Accused."

12.Respectfully following the aforesaid decision rendered by the Hon'ble Supreme Court in **(Rajesh Vs. State of Haryana)**, this Court can come to the safe conclusion that the appellant cannot be said to have goaded or provoked or incited Patchiammal to commit suicide.

13.It is admitted that there was a pending civil suit between the parties and that on the fateful day Patchiammal had taken paddy from the ancestral house and used it for cooking. This provoked the appellant who came to the house of the deceased and picked up a quarrel. Therefore, there was some justification for the appellant to come to the house of the deceased on the relevant date and time. It is quite possible that the appellant had uttered certain filthy and nasty words during the incident. But I do not think that the appellant can be said to have instigated Patchiammal to commit suicide. The essential ingredients set out under Section 306 of I.P.C. are clearly not made out in this case. The Court below erred in convicting the appellant for the said offence. In this view of the matter, the judgment of the court below set aside and the criminal appeal is allowed. The fine amount, if any, paid by him shall be refunded. The bail bond executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

1.The Judicial Magistrate,
Nanguneri.



2.-do- The Chief Judicial Magistrate, Tirunelveli.

3.The Sessions Judge, Mahila Court,
Tirunelveli.

4.The Superintendent,
Central Prison, Palayamkottai.

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

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

7.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+2 cc Mr.T.A.EBENEZER ,Advocate, SR.No.73962,74479

Crl.A. (MD)No.126 of 2011
08.07.2019

_KK/SAR/28.01.2020/5P-11C/