

**BAIL SLIP**

The Appellant herein / Accused viz., namely Saravanakumar @ Saravanan, S/o.(late) Ravi was released on bail as per order of this Court dated 29.04.2011 made in MP(MD)No.1/2011 on Crl.A(MD)No.140 of 2011.

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 31.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRL A (MD)No.140 of 2011**

Saravanakumar @ Saravanan

... Appellant / Accused No.1

**Vs.**

State, through Inspector of Police,  
Elumalai Police Station,  
Peraiur Taluk,  
Madurai District.  
(Crime No.357 of 2005)

... Respondent / Complainant

**Prayer :** This Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, to call for the records of the learned Additional Sessions Judge, Mahila Court, Madurai in S.C No.536 of 2006 dated 09.03.2011 and to set aside the conviction and sentence order dated 09.03.2011 by acquitting the appellant herein.

For Appellant : Mr.G.Radhakrishnan

For Respondent : Mr.A.Robinson

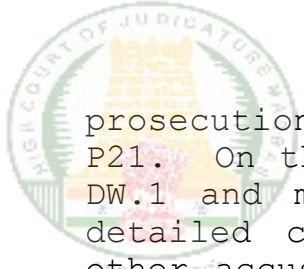
Government Advocate (crl.side)

**JUDGMENT**

The appellant was tried along with seven others for the offences under Sections 498 A, 304 B and 306 IPC in S.C No.536 of 2006 on the file of the Sessions Judge/Mahila Court, Madurai vide judgment dated 09.03.2011. While the other accused were acquitted, the appellant was found guilty of the offence under Section 306 IPC and sentenced to three years rigorous imprisonment and levied with a fine of Rs.1,000/-.

2.The prosecution case briefly stated is as follows :

The marriage between the appellant and one Sangeetha took place on 01.09.2003. The said Sangeetha committed self immolation on 26.05.2005. Sangeetha succumbed to the injuries on 29.05.2005 at about 08.00 P.M. The father of the deceased Sangeetha namely Velusamy/PW.1 gave a statement before the Elumalai Police Station and based on the same, Crime No.357 of 2005 was registered under Section 174 of Cr.PC. Investigation was undertaken and final report came to be filed for the offences under Sections 498 A, 304 B and 306 IPC against the appellant before the Judicial Magistrate No.I, Madurai. The case was committed to the Sessions Court in PRC No.8 of 2006 and it was made over to the Sessions Judge/Mahila Court, Madurai in S.C No.536 of 2006. Charges were framed against the accused and they denied the same. They claimed to be tried. The



prosecution examined as many as 21 witnesses and marked Exs.P1 to P21. On the side of the accused, the appellant examined himself as DW.1 and marked Exs.D1 to D8. The learned Trial Judge after a detailed consideration of the evidence on record, acquitted the other accused. The appellant was also acquitted in respect of the offences under Sections 498 A and 304 B IPC. However, he was found guilty of the offence under Section 306 IPC and sentenced him as mentioned above. Challenging the same, this appeal has been filed.

3.The learned counsel appearing for the appellant drew my attention to the dying declaration given by the deceased Sangeetha before P.W.14, the Judicial Magistrate. The dying declaration has been marked as Ex.P13. In her dying declaration, Sangeetha had stated that owing to the petty quarrel with her husband, she set fire herself. It is thus seen that the appellant by his conduct had not provoked his wife to commit suicide. 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 (Cr1.) 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*



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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.

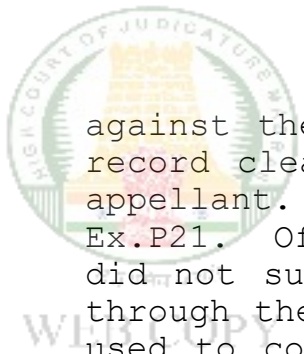
17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (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."

4. Applying the ratio laid down in the aforesaid decision of the Hon'ble Supreme Court, I am of the view that the essential ingredients of Section 306 of IPC have not been satisfied in this case. Therefore, the court below erred in convicting the appellant for the offence under Section 306 IPC. The appellant is acquitted in respect of the offence under Section 306 IPC.

5. It is true that the appellant was acquitted of the charge under Section 304 B IPC as there was no dowry demand. It is also true that he was acquitted in respect of the charge under Section 498 A IPC. Even though no appeal has been filed by the State



against the said acquittal, I am of the view that the evidence on record clearly points to commission of cruelty on the part of the appellant. The letters written by the deceased have been marked as Ex.P21. Of course, those letters though addressed to the appellant, did not surface during the life time of Sangeetha. But, on going through the same, one can come to the conclusion that the appellant used to come home drunk and also beat up Sangeetha. The marriage between the appellant and Sangeetha took place on 01.09.2003. A male child was also born through the wedlock. Sangeetha committed self immolation on 26.05.2005. That was within two years from the date of marriage. Unless she had been subjected to cruelty, there was no reason for her to take her own life.

6.I carefully went through the testimony of the accused who examined himself as D.W.1. The accused had only claimed that he did not demand dowry. He had not come out with any explanation whatsoever as to why she had committed suicide. I did not want to attach much credence to the dying declaration recorded by P.W.14, the Judicial Magistrate. In a case of self immolation, the women concerned would initially be under the impression that she would survive. They may even regret the decision to commit self immolation. They would want to have a reunion with the husband for the sake of child or children. In such a condition, they tend to absolve the husband of all blame. But, when they later realize that she may not survive, they tend to come with the actual version. That is why in multiple dying declarations, one different versions are found. Of course, in the case on hand, there is only one version. But then, in this case, a newly married woman had resorted to go to the extreme level of self immolation, more so, when she is having a breast-feeding child. The dying declaration does not inspire my confidence.

7.At this stage, the learned counsel for the appellant submits that he would not challenge the finding of guilt for the offence under Section 498 A IPC. The appellant had already spent about 79 days in prison. The child is still with the appellant and it is he who is bringing it up. The appellant has not remarried. Taking note of these circumstances, I am of the view that even while holding the appellant guilty of the offence under Section 498 A IPC, the sentence of imprisonment is modified and reduced to the period already undergone by him. The bail bond executed by the appellant shall stand cancelled.

8.With this modification both in the matter of conviction and sentence, the appeal stands partly allowed.

Sd/-

Assistant Registrar (Crl.side)

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1. THE ADDITIONAL SESSIONS JUDGE  
MAHILA COURT, MADURAI
2. THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE NO.I,  
USILAMPATTI, MADURAI DIST.
3. THE CHIEF JUDICIAL MAGISTRATE  
MADURAI
4. THE OFFICER INCHARGE,  
CONTONMENT POLICE STATION, TRICHIRAPPALLI
5. THE INSEPCTOR OF POLICE  
ELUMALAI POLICE STATION, PERAIYUR TALUK,  
MADURAI DISTRICT
6. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

Copy to: THE RECORD KEEPER, CRIMINAL SECTION,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

**CRL A (MD) No.140 of 2011**  
**31.07.2019**

**SMA/21/05/2020/5P/8C**