



Bail Slip

1.Devaperiyam, A1, S/o.Alaguraja, 2.Bakianathan, A3,  
S/o.Alaguraja, were released on Bail vide Court order dated  
29.06.2011, made in MP(MD)No.1 of 2011 in Crl.A.(MD)No.158 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2019

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

Crl.A.(MD)No.158 of 2011

1. Devaperiyam  
2. Bakianathan

... Appellants/Accused

Vs.

The State represented by,  
The Inspector of Police,  
Saptur Police Station,  
Periyur Taluk.  
(Crime No.172 of 2007)

... Respondent/Complainant

**Prayer:** Criminal Appeal is filed under Section 374(2) of Cr.P.C, to set aside the order of conviction and fine amount passed in S.C.No.29 of 2010 dated 20.05.2011 by the learned Sessions Judge/Magalir Neethi Mandram, Madurai.

For Appellants : Mr.J.Vijayaraja,  
Legal Aid counsel.

For Respondent : M/s.S.Bharathi,  
Government Advocate (Crl. Side).

**JUDGMENT**

The appellants were tried in S.C.No.29 of 2010 on the file of the Mahila Court, Madurai, along with three others and vide Judgment dated 20.05.2011 while the other three accused were acquitted, the first appellant was found guilty of the offence under Sections 498(A) and 306 of I.P.C. and sentenced to undergo one year Rigorous Imprisonment and three years Rigorous Imprisonment. The second appellant/accused No.3 was convicted for the offence under Section 306 of I.P.C., and sentenced to undergo three years Rigorous Imprisonment. Fine amount was also levied on all of them.

<https://hcservices.ecourts.gov.in/hcservices> 2. The prosecution case is that the first appellant was



married to the deceased Azhaguthai some 15 years prior to the occurrence. The second appellant is the younger brother of the first appellant. Two female children were born to the appellant through Azhaghuthai. The first appellant had sold away their property in order to settle his debts. The first appellant had done so without the knowledge of his wife Azhaghuthai. In this regard a quarrel arose between the two. While so, on 21.09.2007 at about 7.30 p.m., when Azhaghuthai came to collect her belongings, the accused are said have scolded her. Unable to bear the said harassment, Azhaghuthai committed suicide by hanging herself on 22.09.2007. In this regard, P.W.1 brother of Azhaghuthai lodged Ex.P.1 complaint before the Inspector of Police, Saptur police station. Ex.P.5 First Information Report in Crime No.172 of 2007 was registered for the offence under Section 174 of Cr.P.C.

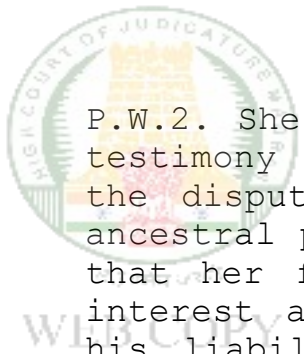
3. Investigation was taken up and after following the usual formalities, final report was filed before the learned Judicial Magistrate No.2, Usilampatti. The case was committed to the Sessions Court in P.R.C.No.22 of 2009. It was made over to the Mahila Court, Madurai and taken up for trial in S.C.No.29 of 2010. Charges were framed against all the five accused. They pleaded not guilty and claimed to be tried. The prosecution examined as many as 13 witnesses and marked Ex.P.1 to Ex.P.9. M.O.1 Sari was also marked. The learned trial Judge after a detailed consideration of the evidence of record, by Judgment dated 20.05.2011 acquitted accused Nos.2,4 and 5, and sentenced accused Nos.1 and 3 as mentioned above. Questioning the same, this Criminal appeal came to be filed.

4. When the matter was taken up for hearing, there was no representation on the side of the appellant. Hence this Court directed the Registry to appoint a Legal Aid counsel. The learned Legal Aid counsel appearing for the appellants, apart from reiterating the contentions set out in the memorandum of grounds, filed written notes and submitted that the prosecution did not establish its case beyond reasonable doubt and that the appellants are entitled to acquittal.

5. Per contra the learned Government Advocate(Crl. Side) contended that the impugned Judgment does not warrant any interference.

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

7. The first appellant got married to the deceased Azhaghuthai some 15 years prior to the occurrence. Two children were born. One of the daughters, namely, Mary was examined as



P.W.2. She was aged about 13 years at the time of occurrence. Her testimony is crucial. She had clearly stated the actual cause for the dispute between her father and mother was the sale of the ancestral property without the knowledge of her mother. She stated that her father had borrowed a sum of Rs.10,000/- and that the interest alone had mounted to Rs.7,000/-. In order to liquidate his liability, he had sold the property and settled the same. Azhaghuthai was deeply upset about this development. In fact Azhaghuthai returned to her parent's house with the children. But their personal effects and cloths were lying in the house of the first appellant. In order to collect the same, P.W.2 and her younger sister went to the house of her father. It was the second appellant herein, namely, accused No.3 who was present there. When P.W.2 asked for key, accused No.3 is said to have beaten P.W.2. It was reported to the mother. Azhaghuthai came and picked up quarrel. The second appellant is said to have beaten Azhaghuthai with a stick. Thereafter, P.W.2 and Azhaghuthai returned. When P.W.2 woke up in the morning, she could not see her mother and later she found her mother hanging in the garden.

8. The testimony of P.W.2 is immensely credible and arouses the confidence of this Court. But then, the question that arises for consideration as to whether the appellants can be found guilty in respect of the offence under Sections 498(A), 306 of I.P.C. Section 306 of I.P.C. will be attracted, if there is abetment of suicide. The Hon'ble Supreme Court in the recent decision reported AIR (2019) SC 478(Rajesh V. State of Haryana) has held as follows:-

"7. It is necessary to refer to Section 306 I.P.C. and Section 107 I.P.C. 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 of I.P.C. 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 I.P.C, 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 I.P.C. (See Amalendu Pal alias Jhantu V. State of West Bengal( (2010) 1 SCC 707).

9. The term instigation under Section 107 I.P.C has been explained in Chitresh Kumar Chopra V. State (Govt. of NCT of Delhi( (2009) 16 SCC 605) as follows:

'16. Speaking for the three-Judge Bench in Ramesh Kumar case [ (2001) 9 SCC 618: 2002 SCC(Cri) 1088] : (AIR 2001 SC 3387), 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 "investigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the



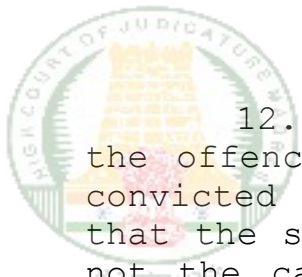
other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7<sup>th</sup> 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)."

9. Applying the principles laid down above, one can come to the conclusion that the appellants herein could not have intended that Azhaghuthai should commit suicide. There was a quarrel, though a serious one, among the members of the family. But by no stretch of imagination, one can come to the conclusion that the appellants intended that Azhaghuthai should commit suicide. The elementary ingredients of Section 306 of I.P.C., are wholly absent in this case. Therefore, the Court below could not have convicted the appellants for the offence under Section 306 of I.P.C.

10. In this view of the matter, the conviction of the appellants for the offence under Section 306 of I.P.C. stands set aside.

11. The next question that arises for consideration is whether the appellants had committed the offence under Sections 498(A) of I.P.C. Section 498(A) of I.P.C. will be attracted, if the woman concerned is subjected to cruelty by the husband or relative of the husband. In this case, no doubt Azhaghuthai was harassed. But then, it was not with a view to coerce her or any person related to her to meet any unlawful demand for any property. There is no willful conduct attributable to the appellants. Therefore, I am of the view that the Court below erred in finding the appellants guilty of the offence under Section 498(A) of I.P.C. Therefore, the appellants are acquitted of the offence under Section 498(A) of I.P.C. It has been clearly brought out in the evidence that the second appellant Bakianathan had needlessly scolded and attacked P.W.2 Mary and Azhaghuthai. When P.W.2 Mary and Azhaghuthai went to their house and asked for the key, accused No.3 Bakianathan scolded and attacked with a stick. Of course that arose out of a petty quarrel. Of course, for the disproportionate reaction of Azhaghuthai, the second appellant cannot be blamed. But from the evidence on record, it has been established that the second appellant had beaten not only Azhaghuthai but also P.W.2 Mary.



12. Therefore, while accused No.3 cannot be convicted for the offence under Section 498(A) of I.P.C., he can definitely be convicted for the offence under Section 323 of I.P.C. It is stated that the second appellant was in prison for about 45 days. It is not the case of the prosecution that any grievous injuries were caused by using the stick. Therefore, while the first appellant is acquitted of all the charges, the second appellant is found guilty of the offence under Section 323 of I.P.C. The sentence of imprisonment is modified and reduced to the period already undergone by the second appellant.

13. The Criminal Appeal stands partly allowed, accordingly. The bail bond, if any, executed by them shall stand cancelled. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar (CS)

To:

1. The Sessions Judge/Magalir Neethi Mandram,  
Madurai.
2. The Judicial Magistrate No.II,  
Usilampatti
3. The Inspector of Police,  
Saptur Police Station,  
Periyur Taluk.
4. The Additional Public Prosecutor  
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer, -2 copies  
Criminal Section,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.J.VIJAYARAJA, Advocate ( SR-78115[F] dated 29/07/2019 )

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Crl.A.(MD)No.158 of 2011  
26.07.2019

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