

**Bail Slip**

The Appellant / Accused namely Manoharan S/O. Paulchamy, was released on bail as per order of this court dated 17.8.2011 and made in MP(MD)No.1 of 2011 in CrI.A(MD)No.240 of 2011 on the file of this court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 29.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRL A (MD)No.240 of 2011**

Manoharan

... Appellant / Accused

Vs.

The State, rep.by
The Inspector of Police,
B8, Subramaniyapuram Police Station,
Madurai.
(Cr.No.282 of 2003)

... Respondent / Complainant

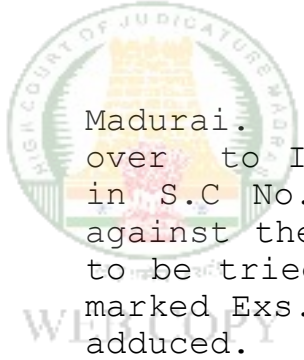
Prayer : This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to set aside the judgment of conviction and sentence passed in Special S.C No.52 of 2005 dated 05.08.2011 on the file of the III Additional District and Sessions Court (PCR), Madurai.

For Appellant : Mr.R.Murugappan
For Respondent : Mr.A.Robinson
Government Advocate (crl.side)

JUDGMENT

The appellant was convicted for the offence under Section 306 IPC and sentenced to undergo five years rigorous imprisonment and levied with a fine of Rs.1000/- vide judgment dated 05.08.2011 in S.C No.52 of 2005 on the file of the III Additional District and Sessions Court (PCR), Madurai.

2.The case of the prosecution is that the deceased Krishnasamy and his wife were running a chit business. The appellant and his brother Ayyanar had paid chit amount of Rs.50,000/ each. Even though the chit cycle was completed, the deceased Krishnasamy did not pay the dues payable to the appellant Manoharan. Manoharan is said to have exerted considerable pressure on Krishnasamy. He is said to have fixed offending posters on the doors of the house of the deceased. This happened on 03.05.2003. Unable to bear the harassment of the appellant, Krishnasamy consumed poison on 04.05.2003 at about 06.45 a.m., and died. Hence, Ex.P1 complaint was lodged by PW.1 who is a relative of the deceased. The statement of PW.1 was recorded and on that basis Crime No.282 of 2003 was registered on the file of the B8 Subramaniyapuram Police Station under Section 174 of Cr.PC. Investigation was undertaken and final report was filed against the appellant under Section 306 IPC before the Judicial Magistrate No.4,



Madurai. The case was committed to the Sessions Court and made over to III Additional District and Sessions Court (PCR), Madurai in S.C No.52 of 2005. Charge under Section 306 IPC was framed against the appellant. The appellant denied the charge and claimed to be tried. The prosecution examined as many as 14 witnesses and marked Exs.P1 to P.16. On the side of the accused, no evidence was adduced. Incriminating circumstances were put to the accused and he denied the same. The learned Trial Judge by the impugned judgment dated 05.08.2011 held that the appellant was guilty of the offence under Section 306 IPC and sentenced him to undergo five years rigorous imprisonment. Challenging the same, this appeal came to be filed.

3.The learned counsel appearing for the appellant reiterated the contents set out in the appeal memorandum and wanted this Court to reverse the impugned judgment. Per contra, the learned Government Advocate (crl.side) submitted that the impugned judgment does not warrant any interference.

4.I carefully considered the rival contentions and perused the evidence on record. The learned Government Counsel would primarily contend that it has been established beyond reasonable doubt by forensic evidence that it was the appellant who wrote Ex.P3 letter and fixed Ex.P2 letter on the door of the house of the deceased. I carefully went through the contents of Ex.P2 and Ex.P3. All that these two documents would indicate is that the appellant had threatened the deceased Krishnasamy with certain dire consequences. The appellant had made it clear that Krishnasamy should settle his liability either by paying the amount or by mortgage one of his house. I am of the view that the person to whom the money is due is bound to react this way. The appellant had not beaten up the deceased Krishnasamy and caused any injury. All that he stated was Krishnasamy should clear his liability, otherwise he will face consequences. This can be taken only as a legal threat and not in any other way. In any event, the appellant could not have intended that the appellant should commit suicide. The appellant was interested in collection of his dues and not in the demise of Krishnasamy.

5.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



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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 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



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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."

6.Applying the ratio laid down in the aforesaid decision, I have to necessarily hold that the essential ingredients of Section 306 IPC are not present in this case. In this view of the matter, the impugned judgment is set aside. The appellant is acquitted of the charge under Section 306 IPC. This appeal is allowed. The bail bond executed by the appellant shall stand cancelled. The fine amount if any remitted by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm

To

- 1.The Judicial Magistrate No.IV, Madurai.
- 2.-do-Thro' The Chief Judicial Magistrate, Madurai.
- 3.The III Additional District and Sessions Court(PCR), Madurai.
- 4.-do-thro' the Principal District Sessions Judge, Madurai.
- 5.The Inspector of Police,
B8, Subramaniyapuram Police Station, Madurai.
- 6.The Superintendent, Central Prison, Madurai.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

copy to: The Section Officer, Crl.Section (Records) (2 copies)
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.R.MURUGAPPAN, Advocate (SR-78428[F] dated 30/07/2019)

CRL A (MD)No.240 of 2011
29.07.2019

SMA/29/01/2020/4P/11C