



Bail Slip

Appellant/Accused namely, Hameem, S/o.Abdul Haleem was directed to be released on bail in and by the order of this Court, dated 12.06.2009 made in MP(MD)No.1 of 2009 in Crl.A(MD)No.66 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.66 of 2009

Hameem

... Appellant/Accused

Vs

State by,
The Inspector of Police,
Thanjavur Medical College Police Station,
Thanjavur, Thanjavur District.

... Respondent/
Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to allow the Appeal and set aside the Judgment on the file of the Additional Sessions Judge/Essential Commodities Act, Special Judge, Thanjavur in S.C.No.425 of 2008, dated 24.12.2008.

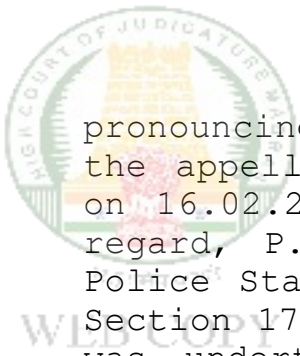
For Appellant : Mr.A.Rahul

For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offence under Section 306 of IPC and sentenced to 10 years rigorous imprisonment and levied with fine of Rs.10,000/- vide Judgment dated 24.12.2008 in S.C.No.425 of 2008 on the file of the Additional District and Sessions Judge (Special Court for EC Act cases), Thanjavur.

2.The case of the prosecution is that the appellant joined the Herbal Firm of P.W.1 in the year 1996 as daily wage employee. He developed intimacy with Indra, daughter of P.W.1. Indra eloped with the appellant in the year 1997 and got herself converted to Islam and renamed herself as Ameena Beevi and got married to the appellant. Two children were born. While so, the appellant in the year 2006 wanted to marry another girl and therefore, compelled the deceased Ameena Beevi to give consent. The appellant had an intention to divorce Ameena Beevi by



pronouncing Talaq. As a result, unable to bear the harassment of the appellant, Ameena Beevi committed suicide by hanging herself on 16.02.2006 at 09.30 a.m., in her matrimonial home. In this regard, P.W.1 lodged Ex.P1 complaint before the Medical College Police Station. Crime No.45 of 2006(Ex.P4) was registered under Section 174 of Cr.P.C. on 17.02.2006 at 01.00 p.m. Investigation was undertaken and final report came to be laid against the appellant for the offences under Sections 306 and 201 of IPC before the Judicial Magistrate No.2, Thanjavur. Cognizance of the offence was taken and the case was committed to the Sessions Court in P.R.C.No.20 of 2007. It was made over to the Additional District and Sessions Judge (EC Act Cases), Thanjavur in S.C.No.425 of 2008. Charges were framed against the appellant for the aforesaid offences. The appellant pleaded not guilty to the charges and claimed to be tried. The prosecution examined as many as 11 witnesses and marked Ex.P1 to Ex.P10. On behalf of the accused, Ex.D1 to Ex.D4 were marked. The learned trial Judge, after a detailed consideration of the evidence on record, by the impugned Judgment dated 24.12.2008, acquitted the appellant of the offence under Section 201 of IPC, but then, found him guilty of the offence under Section 306 of IPC and sentenced him to 10 years rigorous imprisonment. Questioning the same, this appeal has been filed.

3.The learned counsel appearing for the appellant submitted that the case of the prosecution rests on the testimony of P.W.1 and P.W.2. P.W.1 is the mother of the deceased. P.W.2 is the elder brother of the deceased. From their testimony, one can very easily come to the conclusion that they are not only interested witnesses but also the inimical witnesses. Their enmity towards the appellant is very apparent. P.W.1 and P.W.2 were aggrieved that the deceased eloped with the appellant and contracted marriage with the appellant after converting to Islam. The appellant's counsel submitted that the testimony of P.W.1 and P.W.2 should be viewed with caution and suspicion and subjected to searching scrutiny. He also submitted that the appellant and P.W.2 were living a happy life. Admittedly, theirs was a love marriage. The appellant got married in the year 1997. The occurrence took place in the year 2006. Thus for full nine years, they have been living together. Two children were born through the wedlock. There is nothing on record to even remotely indicate that the appellant had any strained relationship with the deceased.

4.The appellant's counsel drew my attention to the testimony of P.W.2, in which, it has been claimed that the rope that was used for committing suicide by the deceased, was recovered by the Police. But then, no such rope was marked. The appellant's



suppression of certain material facts. He also submitted that P.W.4 and P.W.5 who were employees in the firm run by the appellant and the deceased, turned hostile. Likewise, the mahazar witnesses also turned hostile. In this case, no inquest was conducted. No confession was obtained from the appellant. Though P.W.1 would refer to Santhi and Suganthi as persons who had known all the things, they were not examined by the prosecution. The appellant's contention is that the appellant was acquitted of the offence under Section 201 of IPC and that the State has not preferred any appeal challenging the acquittal of the appellant for the said offence. Therefore, the same has become final. What remains to be considered is whether the Court below was justified in convicting the appellant for the offence under Section 306 of IPC. The learned counsel appearing for the appellant drew my attention to the recent decision of the Hon'ble Supreme Court reported in **Crl.A.No.93 of 2019 (Rajesh Vs. State of Haryana)** and contended that applying the principles laid down therein, the charge under Section 306 of IPC is clearly not made out. Hence, he called for reversal of the impugned Judgment.

5.Per contra, the learned Government Advocate (Crl.side) appearing for the respondent submitted that the impugned Judgment warrants interference to the extent that the appellant was acquitted of the offence under Section 201 of IPC. He called upon this Court not to disturb the conviction rendered by the Court below for the offence under Section 306 of IPC. The learned Government Advocate(crl.side) took me through the evidence on record and called upon this Court to dismiss this appeal.

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

7.It is beyond dispute that the deceased Ameena Beevi died on 16.02.2006 at her matrimonial house. P.W.9-Doctor S.Vijaya Lakshmi, has stated that the deceased died of asphyxia due to hanging. Ex.P5-Postmortem Certificate was marked through P.W.9. It is relevant to mention here that P.W.9's testimony was not at all challenged. In other words, there was no cross examination of P.W.9. Therefore, the appellant's counsel cannot now contend that the deceased died of natural causes. The prosecution had established beyond reasonable doubt that Ameena Beevi committed suicide by hanging herself. It is again beyond dispute that she hanged herself in her matrimonial home. In the matrimonial home, apart from the deceased, the appellant and the two children alone were residing. Therefore, this is a case in which, Section 106 of the Indian Evidence Act, 1872, will have to be applied. Section 106 states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

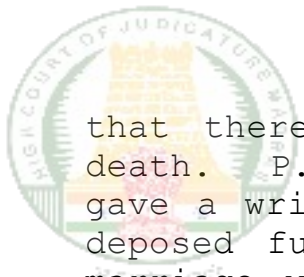


8.P.W.1 is none other than the mother of the deceased. She had deposed that her daughter eloped with the appellant in the year 1997 and got married to him. She however had stated that following the birth of two children, they got reconciled. This Court can take note of the judicial notice that when the daughter contracts a love marriage, the parents initially oppose the same. But they come to terms once a grand child is born. Therefore, the testimony of P.W.1 definitely inspires the confidence of this Court. P.W.1 states that she was having a milch cow and that her daughter would come to her house daily to take milk from her. This was because, the children were aged about 5 years and 3 ½ years respectively. But on the fateful day that is 15.02.2006, she had not come for taking milk. Therefore, P.W.1 came to the house of the appellant to give milk. It was around 09.00 a.m., The door was open. The appellant was calling out her daughter's name as she entered the house. Only Revathi and Panchavarnam, the employees were present. P.W.1 entered the bedroom and saw her daughter lying on the bed. The appellant was also present in the house and told P.W.1 that he had already dropped the children to the school and he had to go out in connection with his sales work. P.W.1 attempted to wake up her daughter. But she found her body rather cold. When P.W.1 raised an alarm that her daughter was dead, the employees told P.W.1 not to shout and that, the deceased was in a similar condition earlier and after she was admitted to the Hospital, she became alright. There upon, the deceased was taken in a Omni Van and rushed to the Doctor. P.W.1 stated that it was the appellant who drove the vehicle. When they went to the hospital, it was informed that Ameena Beevi had already died. But then, the appellant told P.W.1 that they should go to another hospital. By then, P.W.1 developed suspicion and asked the appellant to go to the Medical College Hospital. But the appellant, according to P.W.1, was not heeding to her request. But P.W.1 created an alarm and stopped the vehicle in the outside of the house of her close relative which was situated enroute. The said relative was a retired Medical College Compounder and he examined P.W.1's daughter and informed P.W.1 that Ameena Beevi was no more.

9.All of them returned home and the body of Ameena Beevi was laid in a coffin box. The appellant had insisted that the final ceremony should be performed as per the Islamic rites. In the mean while, P.W.1 informed her relatives and all of them arrived. They insisted that as per their customs, the body will have to be bathed. When the cooling box was opened and the cloths were removed, it was noted that there was a blood clot on the neck of the deceased. Immediately, P.W.1 insisted that the body was not to be buried. She then lodged a complaint before the Medical College Police Station. She had instructed the relatives to keep the body.

<https://hse.serve.gov.in/hse-portal>

P.W.1 informed the Sub Inspector of Police



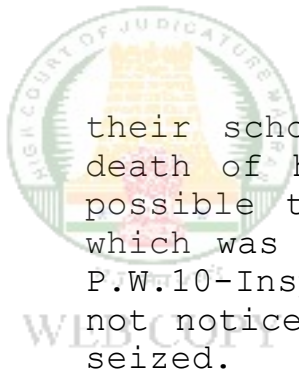
that there was some suspicion in the matter of her daughter's death. P.W.1 originally lodged oral information and thereafter, gave a written complaint vide Ex.P8. P.W.1 in her testimony had deposed further that the appellant wanted to contract a second marriage with a relative and that, he was demanding that Ameena Beevi should consent for the same. According to P.W.1, it was the conduct of the appellant that led her daughter to commit suicide. P.W.2 had also substantially corroborated the stand of P.W.1.

10. Even though P.W.3 and P.W.4 had turned hostile, they do admit that P.W.1 came to the house of the appellant on the fateful day and it was she who raised an alarm about the condition of Ameena Beevi. Therefore, the presence of P.W.1 on the occurrence day in the house of the appellant has been established beyond reasonable doubt by the prosecution.

11. A cumulative reading of the testimony of P.W.1, P.W.3, P.W.4 and P.W.9 would indicate that on 16.02.2009, by the time P.W.1 arrived at the house of the appellant, Ameena Beevi had already died. Her death is only due to hanging and not due to any other reason. But her body was kept in a sleeping posture on her bed.

12. The appellant's counsel would state that Ameena Beevi was facing a murder trial. She was also facing a cheque dishonour case. In fact, Non Bailable Warrant was issued against her and only on 15.02.2006, she surrendered before the Judicial Magistrate No.2, Thanjavur and got it recalled. Thus, Ameena Beevi was under depression. In fact, P.W.1 herself was admitting in the cross examination that on one occasion, it was the appellant who saved her. Therefore, the suggestion of the appellant's counsel is that due to her mental depression, she committed suicide and that, the appellant cannot be fastened with any liability on that account.

13. The learned Government Advocate (Crl.side) would draw my attention to the fact that not only Ameena Beevi but also the appellant was also a co-accused in the very same murder trial. Ameena Beevi and the appellant were jointly running a business. Therefore, travails of Ameena Beevi are directed attributable to the activities of the appellant. Be that as it may, the appellant chose not to give any explanation, when the incriminating circumstances were put to him under Section 313 of Cr.P.C. As already pointed out, the death of Ameena Beevi was due to hanging and it had taken place in the appellant's house which was the matrimonial home. Obviously, after noting that his wife had died, the appellant had brought down the body from ceiling and made it appear as if she was sleeping due to consumption of sleeping pills. The appellant had taken the children and dropped them in



their school. He did not disclose the factum of the unnatural death of his wife due to hanging to anybody else. It is quite possible that the appellant had destroyed the rope or the saree which was used by Ameena Beevi for hanging herself. That is why, P.W.10-Inspector of Police, in his testimony, stated that they did not notice any rope in the occurrence spot and that, nothing was seized.

14. In this case, the appellant was under a legal obligation to have informed not only P.W.1 but also the local police about the commission of suicide by his wife. Instead, he chose to give a false information to P.W.1. Therefore, I hold that the appellant is guilty of the offences under Sections 202 and 203 of IPC.

15. Now the question is whether the conviction of the appellant for the offence under Section 306 of IPC is to be sustained.

16. Even though it was the appellant who ought to have come out with some explanation as to what triggered his wife to commit suicide, the burden essentially rests only on the prosecution. In this case, the deceased had not left any suicide note, nor she informed her mother or brother. There is nothing on record to indicate that the acts of the appellant have goaded the deceased to commit suicide. Of course, P.W.1 would claim that the appellant wanted to marry another woman and that he was demanding that Ameena Beevi should give her consent. But then, the appellant cannot have intended that Ameena Beevi should die. In the recent decision of the Honourable Supreme Court in **Crl.A.No.93 of 2019 (Rajesh Vs. State of Haryana)** held as follows:-

'17. 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 West Bengal*).

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



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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.''

17.Applying the principles set out therein, I am of the view that the offence under Section 306 of IPC was not made out against the appellant. Therefore, the conviction of the appellant for the offence under Section 306 of IPC is set aside. But then, I have found him guilty of the offences under Sections 202 and 203 of IPC.

18.The appellant was directed to appear before this Court so that this Court can hear him in the matter of sentence. The accused appeared in person and was heard with regard to the sentence. The accused pleaded that he is innocent and that he was falsely implicated in this case and that out of fear, he did not inform P.W.1 about the suicide. The accused prayed that this Court can show some leniency in the matter of sentence. Taking into account all the circumstances, this Court sentences the appellant to one year rigorous imprisonment for the offence under Sections 202 and 203 IPC. The period of incarceration already undergone by the appellant will be set off in terms of Section 428 of Cr.PC. The Trial Court is directed to take steps to enforce this judgment. Accordingly, this appeal is partly allowed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

To

1.THE ADDITIONAL SESSIONS JUDGE/
ESSENTIAL COMMODITIES ACT, SPECIAL JUDGE, THANJAVUR.

2.THE PRINCIPAL SESSIONS JUDGE, THANJAVUR

3.THE JUDICIAL MAGISTRATE NO.2
THANJAVUR

4.THE CHIEF JUDICIAL MAGISTRATE,

THANJAVUR
<https://hcservices.siradms.gov.in/Reserve/Judges/KUMBAKONAM>



5. THE SUPERINTENDENT, CENTRAL PRISON
TRICHY

6. THE INSPECTOR OF POLICE,
THANJAVUR MEDICAL COLLEGE POLICE STATION,
THANJAVUR, THANJVAVUR DISTRICT.

7. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

COPY TO

THE SECTION OFFICER,
CRIMINAL SECTION(RECORDS)
MADURAI BENCH OF MADRAS HIGH COURT,
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+1 CC to M/s.A.RAHUL, Advocate (SR-80805[F] dated 08/08/2019)

RMI/SKM

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