**Bail Slip**

1.M/s.Nallammal W/o.Subramanian, 2.Lakshmi, W/o.Kathirvel, 3.Subramanian S/o.Murugan, 4.Kathirvel S/o.Subramanian were released on bail vide order dated in MP(MD)1 of 2011 in CrI. A(MD)No.349 of 2011 and MP(MD) 1 of 2012 in CrI. A(MD)No.349 of 2011 respectively.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 07.08.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CrI A(MD)No.349 of 2011**

1.Subramanian

2.Nallammal

3.Kathirvel

4.Lakshmi

... Appellants/Accused

Vs.

State, rep.by
The Inspector of Police,
Geeyapuram Police Station,
Trichy District.
(Cr.No.13 of 2010)

... Respondent/Complainant

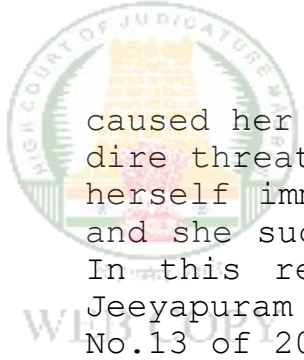
Prayer : This Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, to call for the records made in S.C No.62 of 2011 dated 22.11.2011 passed by the Additional Sessions Judge (FTC No.2), Trichy.

For Appellants : Mr.RM.Sivakumar
For Respondent : Mr.A.Robinson
Government Advocate (crl.side)

JUDGMENT

The appellants were found guilty of the offences under Sections 294(b) and 306 IPC and sentenced to three months rigorous imprisonment and five years rigorous imprisonment respectively and also levied with fine vide judgment dated 22.11.2011 in S.C No.62 of 2011 on the file of the Additional District and Sessions Judge/FTC No.2, Trichirappalli.

2.The case of the prosecution is that on 17.01.2010 at about 03.00 P.M, the appellants abused P.W.1 Balakrishnan, his wife P.W.2 Chinnaponnu and his second wife Jeyalakshmi in filthy language. The second accused is said to have hit P.W.2 Chinnaponnu on her head and caused simple injury. A2 and A4 dragged Jeyalskhmi by her hair and pushed her down. A1 and A3 hit Jeyalakshmi on her back and



caused her simple injury. The appellants also said to have held out dire threats against Jeyalakshmi. Hence, Jeyalakshmi self immolated herself immediately thereafter. She was rushed to the hospital and she succumbed to the injuries on 18.01.2010 at about 12.30 P.M. In this regard, P.W.1 Balakrishnan lodged Ex.P1 complaint before Jeeyapuram Police Station. Based on the same, Ex.P9-FIR in Crime No.13 of 2010 was registered for the offence under Sections 294 (b), 323 and 306 IPC. Investigation was undertaken and final report came to be filed against all the four accused for the offences under Sections 294(b), 306, 323 and 506(ii) IPC before the Judicial Magistrate No.3, Trichirappalli. Cognizance of the offences was taken. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court in PRC No.3 of 2011. The case was made over to the Additional District and Sessions Judge/FTC No.2, Trichirappalli in S.C No.62 of 2011. Charges were framed against all the four accused under the provisions mentioned above. The accused pleaded not guilty and claimed to be tried. The prosecution examined as many as 15 witnesses and marked Exs.P1 to P.12. M.O.1 to M.O.4 were also marked. On the side of the accused, no evidence was adduced. The learned Trial Judge by the impugned judgment acquitted the appellants of the offence under Sections 323 and 506(ii) IPC, but then, found them guilty in respect of the offences under Section 294(b) and 306 IPC. Challenging the same, this appeal came to be filed.

3.The learned counsel appearing for the appellants submitted that the deceased Jeyalakshmi was not formally married to P.W.1 Balakrishnan and that she was living under the same roof. P.W.2 Chinnaponnu was the first wife of P.W.1. While P.W.1's daughter was already married off, the daughter of Jeyalakshmi remained unmarried. Jeyalakshmi also appears to have had some medical issues. According to the appellants' counsel, these circumstances impelled her to commit suicide. He also pointed out that Jeyalakshmi before committing self immolation was careful enough to remove her ear-studs. According to the prosecution, the injury suffered by Jeyalakshmi as well as Chinnaponnu was rather simple in nature. By no stretch of imagination the appellants can be said to have intended that Jeyalakshmi should commit suicide. He, therefore, wanted this Court to set aside the conviction and sentence imposed on the appellants. He also pointed out that during the pendency of the appeal, A2 Nallammal had passed away. The appellants A1 and A3 were in prison for about 75 days while A2 and A4 were in prison for about 45 days. Therefore, the learned counsel for the appellants submitted that this Court should set aside the conviction imposed on the appellants and allow this appeal.

4.I carefully considered the rival contentions and perused the evidence on record. The major charge against the appellant is one under Section 306 IPC. The prosecution had established beyond reasonable doubt that there was a quarrel and minor scuffle between the appellants on the one hand and the family of P.W.1 on the other. But then, the appellants could not have intended that



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

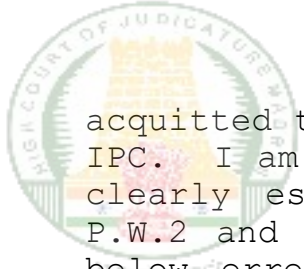
"8.Conviction Under Section 306 Indian Penal Code is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the Accused, which led or compelled the person to commit suicide. In order to bring a case within the purview 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 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



acquitted the appellants in respect of the charge under Section 323 IPC. I am of the view that the charge under Section 323 IPC stands clearly established. The testimony of the victims particularly P.W.2 and P.W.4 commands the confidence of this Court. The court below erred in acquitting the appellants for the offence under Section 323 IPC. Therefore, even while setting aside the conviction imposed on the appellants under Section 306 IPC, I sustain the conviction given by the court below in respect of the offence under Section 294 (b) IPC. Additionally, I find the appellants guilty of the offence under Section 323 IPC also.

7.Now, comes the question of sentence. This Court is informed that the second accused Nallammal has since passed away. Therefore, the proceedings against her stands abated. The fourth accused Lakshmi had spent about 45 days in prison. Therefore, the sentence of imprisonment imposed on her is modified and reduced to the period already undergone. However, the sentence imposed on the appellants A1 and A3 for the offence under Section 294(b) to undergo three months rigorous imprisonment stands confirmed. However, taking note of the lapse of time, I do not deem it fit and appropriate to impose any punishment for the offence under Section 323 IPC. The trial court is directed to take steps to enforce this judgment and commit A1 and A3 to undergo three months rigorous imprisonment. The period of incarceration already suffered by them will be set off in terms of Section 428 of Cr.PC.

8.Accordingly, this criminal appeal stands partly allowed.

Sd/-

Assistant Registrar (III)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Additional Sessions Judge (FTC No.2),
Trichy.
- 2.The Principal Sessions Judge,
Trichy.
- 3.The Inspector of Police,
Geeyapuram Police Station,
Trichy District.
- 4.The District Collector,
Trichy.



5.The Director General of Police,
Mylapore,
Chennai.

6.The Superintendent of Central Prison,
Trichy.

7.The Officer In-Charge,
Special Prison for Women,
Trichy.

8.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madrurai. (2)

+1 CC to Mr.RM.SIVAKUMAR, Advocate SR-80493.

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07.08.2019

CS(22.08.2019) 6P 11C