**Bail Slip**

The Appellant/Sole Accused in Crl.A(MD)No.73/2011 was directed to be released on bail vide Order of this Hon'ble Court dated 06/04/2011 made in MP(MD)No.1/2011 in Crl.A(MD)73/2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 25.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Crl.A.(MD)No.73 of 2011**

Ravindran

... Appellant/Sole Accused

Vs

State represented by,
The Inspector of Police,
Veeravanallur Police Station,
Thirunelveli,
(Cr.No.65/2008)

... Respondent/Complainant

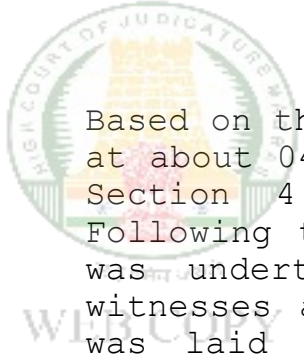
PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records relating to the Judgment dated 01.03.2011 passed by the learned Sessions Judge, Mahila Court, Tirunelveli in S.C.No.14 of 2009 and set aside the same and acquit the appellant.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondent : Mrs.S.Bharathi
Government Advocate (Crl.side)**JUDGMENT**

The appellant was convicted for the offences under Sections 498A and 306 of IPC and Section 4 of Tamilnadu Prohibition of Women Harassment Act and sentenced to two years rigorous imprisonment, seven years rigorous imprisonment and seven years rigorous imprisonment respectively, vide Judgment dated 01.03.2011 in S.C.No.14 of 2009 on the file of the Mahila Court, Tirunelveli.

2.The prosecution case is that the appellant got married to one Pattukani in the year 1999. The appellant was a coolie worker. Two male children were born through the wedlock. While so, on 02.03.2008, at about 11.00 p.m., the appellant is said to have come home in a drunken condition and quarrelled with his wife and beaten her. He is also said to have used certain abusive expressions. Unable to bear the words uttered by the appellant, Pattukani committed self immolation. She was rushed to the High Ground Government Hospital, Tirunelveli. She was given treatment. But she succumbed to burn injuries on 08.03.2008 at about 02.00 a.m., The deceased gave a statement before the Sub Inspector of Police, Veeravanallur Police Station at 10.00 a.m., on 03.03.2008 (Ex.P1).



Based on the same, Ex.P12-FIR in Crime No.65 of 2008 was registered at about 04.00 p.m., for the offence under Section 498 A of IPC and Section 4 of Tamilnadu Prohibition of Women Harassment Act. Following the death of Pattukani, FIR was altered. Investigation was undertaken and after recording the statements of all the witnesses and after completing the usual formalities, final report was laid against the appellant before the Judicial Magistrate, Cheranmahadevi for the offences under Sections 498A and 306 of IPC and Section 4 of Tamilnadu Prohibition of Women Harassment Act. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court in P.R.C.No.78 of 2008. It was made over to the Mahila Court, Tirunelveli in S.C.No.14 of 2009. Three charges were framed against the appellant. The appellant pleaded not guilty and claimed to be tried. In support of the prosecution case, as many as 14 witnesses were examined. Ex.P1 to Ex.P17 were marked. M.O.1 and M.O.2 were also marked. The learned trial Judge, by the impugned Judgment, convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal has been filed.

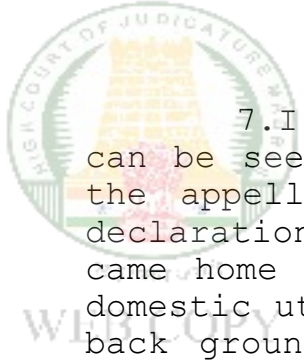
2.Heard the learned counsel on either side.

3.The learned counsel appearing for the appellant submitted that having regard to the evidence on record, he would not challenge the finding of guilt in respect of the offence under Section 498A of IPC. He submitted that he would confine his challenge only to the conviction of the appellant in respect of the offences under Section 306 of IPC and Section 4 of Tamilnadu Prohibition of Women Harassment Act. He further submitted that the children born through Pattukani are very much with the appellant and he is taking good care of them. He further submitted that the appellant had also been in prison for about eight months. He further submitted that even while sustaining the conviction under Section 498(A) of IPC, the sentence may be reduced to the period already undergone by him.

4.Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not call for any interference and that, therefore, this appeal should be dismissed.

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

6.In support of its case, the prosecution examined the parents and the siblings of the deceased. They are P.W.1-Shanmugam, P.W.4-Valliammal and P.W7-Pattan and two neighbours namely P.W.5-Swaminathan and P.W.6-Durai were also examined. It is relevant to note that all of them turned hostile. The other limb of the prosecution case was the dying declaration given by the deceased. The deceased had given two dying declarations in this case. One was before the Judicial Magistrate-P.W.3 and the other was before the Sub Inspector of Police-P.W.12.



7. I carefully went through both the dying declarations. It can be seen there from that the deceased was unhappy with the way the appellant was leading his life. The deceased in her dying declaration had stated that on the occurrence night, the appellant came home drunk and picked up quarrel with her and also broke the domestic utensils. This Court will have to take note of the social back ground of the parties. The appellant was only an ordinary coolie worker. The evils of the alcoholism are too well known. It is unfortunate that the appellant had got habituated to the habit of drinking alcohol. Under the said influence, he had picked up quarrel with her. Now what has to be seen is whether the appellant had any intention to abet the suicide of his wife namely pattukani. The Hon'ble Supreme Court in the decision in **Crl.A.No.93 of 2019 (Rajesh Vs. State of Haryana)** held as follows:-

'7. 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 (Cr1.) 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.

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.''

8. Applying the ratio laid down in the above decision, this Court can safely come to the conclusion that the appellant had no intention to abet his wife Pattukani to commit suicide. Therefore, the conviction of the appellant for the offence under Section 306 of IPC is liable to be set aside. It is accordingly set aside.

9. Now coming to the charge under Section 4 of the Tamilnadu Prohibition of Women Harassment Act, this Court must necessarily hold that there is again no evidence to sustain the same. Even the parents and the brother of the deceased have not supported the prosecution case. As rightly pointed out by the appellant's counsel, the appellant had also sustained injury. When he saw that his wife had self immolated herself, the appellant had attempted to



rescue her. This is clearly admitted by P.W.13-Inspector of Police. Therefore, the conviction of the appellant for the offence under Section 4 of Tamilnadu Prohibition of Harassment of Women Act is also set aside.

10. This Court therefore, sustains the conviction of the appellant only in respect of the offence under Section 498 A of IPC. But then, having regard to the mitigating circumstances already set out above, modifies and reduces the sentence to the period already undergone by him. This criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Sessions Judge,
Mahila Court,
Tirunelveli.
2. The Inspector of Police,
Veeravanallur Police Station,
Thirunelveli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.B.VIJAY KARTHIKEYAN, Advocate SR-77545.

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25.07.2019

CS(16.09.2019) 5P 5C