



BAIL SLIP

The Appellant / Accused viz Kuppusamy S/o. Ramaiya Naidu, was released on bail as per order of this court dated 31.03.2010 made in MP(MD).1 of 2010 in CRL A(MD).111 of 2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrl. A. (MD) No.111 of 2010

Kuppusamy

.. Appellant/Accused

Vs.

State represented by,
The Inspector of Police,
C1, Thideer Nagar Police Station,
Madurai.

.. Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to admit this appeal on file and call for the records from the lower Court and set aside the Judgment of the lower Court passed in S.C.No.253 of 2007 on the file of the Sessions Court/Women's Court/Mahila Court/Madurai, by allowing this appeal.

For Appellant : Mr.K.Govindarajan,
for Mr.P.Mahendran.

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

JUDGMENT

The appellant's wife Subbulakshmi committed suicide by self-immolation on 06.01.2007 at about 3.15 p.m. In this regard, crime No.23 of 2007 was registered on the file of the Inspector of Police, C-1 Thideer Nagar police station, Madurai. Investigation was taken up and final report was filed before the learned Judicial Magistrate No.5, Madurai. The same was committed to the Sessions Court in P.R.C.No.24 of 2007. It was ultimately made over to the Sessions Court/Women's Court/Mahila Court/Madurai, in S.C.No.253 of 2007.

2. As many as three charges were framed under Sections 498(A) and 306 of I.P.C. and under Section 4(b) of the Tamil Nadu Prohibition of Harassment of Women Act. The appellant pleaded not



guilty to the charges and claimed to be tried. The prosecution examined 17 witnesses and marked Ex.P.1 to Ex.P.14. On the side of the accused, no evidence was adduced.

3. The learned trial Judge found the appellant guilty of the offences under Sections 498(A) and 306 of I.P.C. and sentenced him to undergo three years Rigorous Imprisonment and 5 years Rigorous Imprisonment respectively. He was also levied with fine. Challenging the same, this Criminal Appeal has been filed.

4. The learned counsel appearing for the appellant submitted that even though as many as 17 witnesses were examined, quite a few have turned hostile. It is true that the appellant's daughter Viji, P.W.11 testified against the appellant. But then, during the relevant time, she was under the care and custody of her maternal uncle, namely P.W.9 Jeyaraj and that is why, she was tutored into testifying against her father.

5. The appellant's counsel submitted that the Judgment of the Court below has to be reversed and this appeal may be allowed.

6. Per contra, the learned Government Advocate submitted that the prosecution had proved the case beyond reasonable doubt and wanted this Court to sustain the Judgment of the trial Court.

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

8. The charge against the appellant is that on a fateful day i.e., 06.01.2007, the appellant had beaten his wife and demanded that she must get money from her parents for the purpose of celebrating the birthday of their eldest daughter. But then, the evidence of the eldest daughter P.W.11 is that the appellant was upset that the deceased had got a Cake and had celebrated the birthday of the child. Thus, the prosecution charge and the testimony of the witness do not go together.

9. The appellant and the deceased were married for more than 13 years and two girl children were also born through the marriage. It appears that they were leading the life under some economic stress. Therefore, the appellant was upset that his wife need not have spent the money for purchasing the Cake for celebrating the birthday. It appears to be the cause for the occurrence. Therefore, some quarrel had erupted between the husband and the wife. The appellant had left the house and he was not there, when the deceased Subbulakshmi committed self-immolation. Obviously, the appellant could not have intended that the wife would take the extreme step of committing self-immolation.

10. 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



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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.

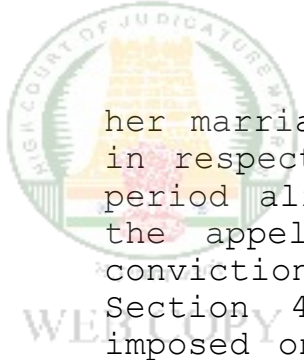
17. Thus, to constitute "investigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 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. In the case on hand also, the appellant cannot be held to be guilty of the offence of Section 306 of I.P.C. Therefore, the conviction of the appellant for the offence in question is set aside. But there is enough and more evidence to indicate that the appellant had cruelly treated his wife.

12. The learned counsel appearing for the appellant submitted that having regard to evidence on record, he would not challenge the finding of guilt in respect of the offence under Section 498(A) of I.P.C. But he would only plead for showing lenience in the matter of punishment. He pointed out that the appellant had spent about 90 days in prison and that he is taking care of the education of the second daughter and that it was he who took care of the marriage of the eldest daughter. In fact both the daughters of the appellant are present before this Court. The second daughter confirmed that the appellant is only funding her education, though she is going to the College from the house of the maternal aunt.

13. Taking note of the mitigating circumstances and the fact that the appellant has undertaken before this Court not only to continue to fund his second daughter's education, but also to bear



her marriage expenses, the sentence of imprisonment can be reduced in respect of the offence under Section 498(A) of I.P.C. for the period already undergone. The conviction and sentence imposed on the appellant under Section 306 of I.P.C. is set aside. The conviction imposed on the appellant in respect of the offence under Section 498(A) is confirmed and the sentence of imprisonment imposed on the appellant for the offence under Section 498(A) of I.P.C. is reduced to period already undergone.

14. The Criminal Appeal stands partly allowed. No costs.

Sd/-

Assistant Registrar(P & A)

// True Copy //

Sub Assistant Registrar(CS)

pmu
To

1. THE SESSIONS JUDGE,
SESSIONS COURT/WOMEN S COURT, MAHILA COURT, MADURAI.

2. THE JUDICIAL MAGISTRATE,
COURT, NO.5, MADURAI.

3. DO THROUGH
THE CHIEF JUDICIAL MAGISTRATE, MADURAI.

4. THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.

5. THE INSPECTOR OF POLICE
C1 THIDEER NAGAR POLICE STATION, MADURAI.

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

COPY TO
THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.(2 COPIES)

+2CC TO MR.P.MAHENDRAN, Advocate Sr. No.74411

Cr1. A.(MD)No.111 of 2010
09.07.2019

SCR(CO)