

Bail Slip

The Appellants/Accused namely Jaya, W/o.Nagooran (A2) and Nagooran, S/o.Karuppaiyan (A1) were released on bail by this Hon'ble Court made in MP(MD).No.1/2010 dated 29.06.2010 and MP(MD).No.2/2010 dated 15.09.2010 in Crl.A.(MD).No.168/2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.168 of 2010

1.Nagooran
2.Jaya

... Appellants/Accused Nos.1 & 2

Vs.

State represented by,
The Deputy Superintendent of Police,
Pattukkottai Division,
Athirampattinam Division,
Thanjavur District.

... Respondent/Complainant

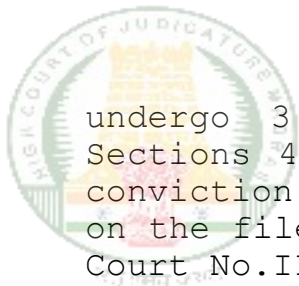
Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, against the Judgment and Conviction dated 18.05.2010 by the learned Additional District & Sessions Judge (FTC-II), Pattukkottai in S.C.No.292 of 2009 by which the appellants found guilty, the 1st appellant is sentenced to undergo 3 years Rigorous Imprisonment for the offence under Section 498-A I.P.C and 10 years Rigorous Imprisonment for the offence under Section 306 I.P.C, the 2nd appellant is sentenced to undergo 3 years Rigorous Imprisonment for each of the offences under Section 498-A and 306 I.P.C and further direction that all the sentences to run concurrently.

For Appellants : Mr.S.Deenadhayalan

For Respondent : Mrs.S.Bharathi,
Government Advocate (Crl. Side).

JUDGMENT

The appellants were found guilty of the offences under Sections 498(A) and 306 of I.P.C. The first accused was sentenced to undergo 3 years Rigorous Imprisonment for the offence under Section 498(A) of I.P.C and 10 years Rigorous Imprisonment for the offence under Section 306 of I.P.C. The second accused was sentenced to



undergo 3 years Rigorous imprisonment for each offences under Sections 498(A) and 306 of I.P.C. Questioning the Judgment of conviction and sentence dated 18.05.2010 made in S.C.No.292 of 2009 on the file of the Additional District and Sessions Judge/Fast Track Court No.II, Pattukkottai, this criminal appeal has been filed.

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2.The case of the prosecution is that the deceased Radha was given in marriage to one Kannan and that two children were born of the said marriage. Kannan was having overseas employment. It is alleged that the appellants herein who are parents of Kannan used to pick up quarrel with the deceased Radha and demand further dowry. The first accused is said to have attempted to misbehave with Radha. The second accused was alleged to have been indifferent to the acts of the first accused. In this back ground on 28.09.2008 at about 11.45 p.m, the first accused had tried to misbehave with the deceased Radha. Unable to bear the inner stress caused by the acts of the first appellant, Radha set herself afire by pouring kerosene on her on 29.09.2008 at about 8.00 a.m. She was admitted in the Government Hospital, Thanjavur, but the treatment was in vain. On 30.09.2008 at 10.00 a.m. Radha passed away in Thanjavur Medical College, Thanjavur. Ex.P.7 is the Dying Declaration of Radha. Based on the same, Crime No.252 of 2008 was registered on the file of the Athirampattinam Police Station under Section 174 of Cr.P.C. It was later altered and final report came to be filed against the appellants herein for the offences under Sections 498(A), 304(B) and 306 of I.P.C. Since the offences are exclusively triable by the Sessions Court, the case was committed to the Sessions Court and it was made over to the Additional District and Sessions Judge/ Fast Track Court No.II, Pattukkottai in S.C.No.292 of 2009. The appellants pleaded not guilty to the charges and claimed to be tried.

3.The prosecution examined as many as 15 witnesses and marked Ex.P.1 to Ex.P.11. On the side of the accused, no evidence was adduced. The learned trial Judge found the appellants guilty of the offences under Sections 498(A) and 306 of I.P.C., and sentenced them accordingly. Challenging the same, the criminal appeal has been filed.

4. The learned counsel appearing for the appellants pointed out that the prosecution examined P.W.1 Kuppammal who is the mother of the deceased and P.W.2 Kaliammal, aunt of the deceased and both of them turned hostile. The appellants' counsel would further contend that there is absolutely no evidence to sustain the prosecution case and that the learned trial Judge erred in convicting the appellants herein. The appellants' counsel would point out that there was a delay in registering the First Information Report. Even according to the prosecution, Radha had sustained 95% burn injury and that therefore, she would not have been in a position to give dying declaration. He also contended that the learned trial Judge erred in finding that the deceased was in a

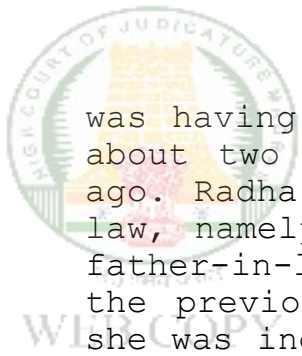


fit state of mind to give dying declaration was not examined. He further contended that the appellants herein could not be said to have abetted the commission of suicide by Radha and that the essential ingredients of 306 I.P.C. are wholly absent in this case. He also contended that in this case no independent witness has been examined and that the impugned judgment rests wholly on the dying declaration of Radha which is not believable. He also submitted that this is a case of multiple dying declaration and that there is a clear discrepancy between the one recorded by P.W.7, the Special Sub Inspector of Police and the one recorded by the Judicial Magistrate/P.W.13. He also contended that as against the second appellant, there is virtually no evidence. He drew my attention to the very recent decision of the Hon'ble Supreme Court reported in AIR (2019) SC 478 (Rajesh V. State of Haryana) in which the scope of Section 306 I.P.C has been dealt with in extenso.

5. I carefully considered the contentions of the learned counsel appearing for the appellants.

6. It is true that no independent witness has been examined in this case. But then as rightly pointed out by the learned Government Advocate(Crl.Side), P.W.3 who was the Village headman had stated that the mother of the deceased and the accused have entered into a compromise. Therefore, this Court can quite understand as to why P.W.1 and P.W.2 turned hostile and did not support the prosecution case. This is a case in which a young woman committed suicide by self-immolation within five years of marriage. She was having two very young children. When her mother has chosen to go over to the side of the accused, the trial Court was definitely justified in going by dying declaration of the deceased.

7. It is well settled that conviction can very well rest on dying declaration alone. Of course, the said dying declaration will have to evoke the confidence of the Court and must carry credibility. In this case, Radha committed self-immolation on 29.09.2008 at about 8.00 a.m. She was rushed to Athirampattinam hospital and then referred to Thanjavur Medical College Hospital. Police intimation was sent and P.W.7, the Special Sub Inspector of Police attached Athirampattinam Police Station came to the hospital and recorded the statement of Radha. It was reduced into writing vide Ex.P.2. Based on Ex.P.2, Crime No.252 of 2008 was registered on 30.09.2008. The testimony of P.W.7 is highly significant. P.W.7 deposed before the Court that he recorded the statement, as Radha narrated. In the cross examination the only question that was put to P.W.7 was that he did not register the First Information Report based on Ex.P.2. P.W.7 stated that he placed Ex.P.2 for consideration of the Inspector of Police. What is of utmost significance is that the accused did not challenge the testimony of P.W.7 that he recorded Ex.P.2 as narrated and told by Radha. It is therefore necessary to refer the contents of Ex.P.2. In Ex.P.2, Radha recorded that she got married five years ago and thus, she

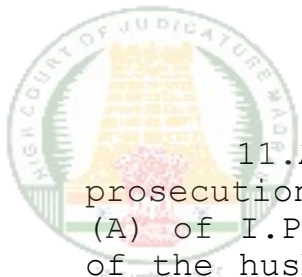


was having a male child aged about 3 years and a female child aged about two years. Her husband Kannan had gone to Singapore a year ago. Radha was living with the children along with her parents-in-law, namely, Nagooran and Jaya. Radha specifically stated that her father-in-law Nagooran misbehaved with her and pulled her hand in the previous night. Her grouse against her mother-in-law was that she was indifferent. Afraid of the father-in-law, Radha had gone to the adjoining shed with her two children and sat there huddled. Since she was unable to bear the inner stress, she committed self-immolation at 08.00 a.m on 29.09.2008. Radha fairly stated in Ex.P.2 that she set fire to herself and that no one else did it. Thus, Ex.P.2 severely implicates the first appellant Nagooran. Ex.P.2 was recorded at around 18.30 hours on 29.09.2008. Earlier at around 3.25 p.m on the same day ie. on 29.09.2008, the Judicial Magistrate No.I, Thanjavur, recorded the dying declaration of Radha. Before the Judicial Magistrate also, Radha had specifically implicated accused No.1 Nagooran. She specifically stated in Ex.P.7 dying declaration recorded by the Judicial Magistrate that her father-in-law misbehaved with her.

8. The Judicial Magistrate was examined as P.W13. P.W.13 had testified in detail as to how she recorded the dying declaration and that Radha was in a fit state of mind when she gave the dying declaration. In fact P.W13 had referred to the certificate issued by the Doctor. In her testimony, she had also stated that she was satisfied about the mental condition of the deceased. The cross examination of P.W13 is again very significant. Nowhere in the cross examination has it has been suggested that the recording of the dying declaration was not as per the statement of the deceased Radha. In other words, the contents of Ex.P.7 have not been challenged in the cross examination of P.W.13.

9. Thus, on a careful reading of the evidence on record, one can safely come to the conclusion that the accused did not challenge Ex.P.2 and Ex.P.7. Both Ex.P.2 and Ex.P.7 have been duly proved by examining P.W.7 and P.W.13 respectively.

10. I am satisfied that the prosecution had proved both the dying declarations i.e. one given before the Judicial Magistrate and the other before the Special Sub Inspector of Police attached to Athirampattinam Police Station. Now, the only question that remains to be considered is whether in view of the same the appellants can be said to have committed the offences with which they were charged. I must straightaway observe that there is no credible evidence against the second appellant herein. The second appellant was only a mother-in-law and in both her dying declaration, except stating that the mother-in-law did not offer her support, the deceased had not really implicated her. Therefore, I am of the view that there is absolutely no evidence against the second appellant. The second appellant is therefore entitled to be acquitted.



11.As regards the first appellant, I have to hold that the prosecution had proved its case beyond reasonable doubt. Section 498 (A) of I.P.C reads that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The expression "cruelty" has been expressed that any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman.

12. In this case, on account of the conduct of the first appellant, Radha had actually committed suicide by self-immolation. Therefore, the learned trial Judge is right in convicting the first appellant of the offence under Section 498(A) I.P.C. and sentencing him to undergo three years Rigorous imprisonment and also levying fine.

13. Now comes to the question as to whether the appellant can be set to have abetted the commission of suicide by Radha. The learned counsel appearing for the appellants placed reliance on the decision of the Hon'ble Supreme Court reported in AIR (2019) SC 478 (Rajesh V. State of Haryana). The Hon'ble Supreme Court in the said decision 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

<https://hcservices.ecourts.gov.in/hcservices/> maintainable 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 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 "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.).'



omission without any intention cannot be termed as instigation. (See Praveen Pradhan V. State of Uttaranchal(2012) 9 SCC 734)."

14. In the case on hand, Radha and two young children were living under the care and custody of the appellants because Radha's husband Kannan, son of the appellants had gone away to Singapore and was there for almost one year. Taking advantage of the situation of Radha, the first appellant had attempted to misbehave with her. The night prior to the occurrence, the first appellant had tried to misbehave with Radha. In this situation, Radha felt so helpless that she took the extreme step of committing suicide by self-immolation. This Court must take note of the fact that Radha had two young children. No woman with two young children would commit suicide unless she was driven to taking that extreme step. By misbehaving with the young daughter-in-law, the first appellant goaded the act of commission of suicide. The trial Court was right in coming to the conclusion that the prosecution had proved the charge under Section 306 of I.P.C. against the first appellant beyond reasonable doubt. I find no ground to interfere with the conviction imposed on the first appellant under Section 306 I.P.C.

15. At this stage, the learned counsel for the appellants submitted that the first appellant is now aged about 66 years. I am therefore of the view that the sentence of 10 years Rigorous Imprisonment imposed on the first appellant can be reduced to five years Rigorous Imprisonment. With this modification in the matter of sentence, the Criminal Appeal stands partly allowed. The period of incarceration already spent by the first appellant will be set off in terms of Section 428 of Cr.P.C. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

pmu/msa

To:

1. The Additional District & Sessions Judge (FTC-II),
Pattukkottai.

2.The Deputy Superintendent of Police
Pattukkottai Division
Athirampattinam Division
Thanjavur District.



3.The Principal District and Sessions Judge,
Thanjavur at Kumbakonam.

4.The Officer-in-Charge,
Special Prison for Women, Trichy.

5.The Superintendent, Central Prison, Trichy.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

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

+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-74935[F] dated
12/07/2019)

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11.07.2019

JMN(24.01.2020) 8P : 10C