



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.202 of 2010

Pandidurai

... Appellant/Accused No.1

Vs

State through
The Inspector of Police,
S.S.Kottai,
(Crime No.27 of 2006)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to allow this appeal, set aside and reverse the conviction and Judgment passed by the learned Assistant Sessions Judge, Sivagangai, dated 25.06.2010 and made in S.C.No.51 of 2007 and acquit the appellant/first accused.

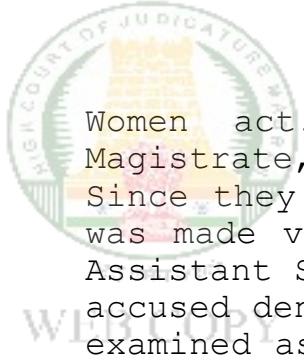
For Appellant : Mr.M.Subash Babu

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

JUDGMENT

The appellant was tried in S.C.No.51 of 2007 on the file of the Assistant Sessions Judge, Sivagangai and convicted for the offences under Sections 498(A), 304(B) and 306 of IPC and sentenced to one year, three years and ten years respectively, vide Judgment dated 25.06.2010. Challenging the same, this appeal has been filed.

2.The case of the prosecution is that on 08.06.2000, the appellant got married to the deceased kalaimehala. Through the said marriage, three children (two female children and a male child) was born. The appellant had subjected his wife to cruelty by demanding additional dowry. Unable to bear the cruelty meted out to her, Kalaimehala committed suicide by hanging on 19.08.2006. In this regard, Thiru.B.Bose, father of the deceased lodged Ex.P1 Complaint before the Inspector of Police, S.S.Kottai Police Station, leading to registration of Crime No.27 of 2006 (Ex.P7). FIR was originally registered under Section 174 of Cr.P.C. There was an alteration of the FIR and after completing the investigation, final report came to be filed not only against the appellant, but also his mother, sister and sister's husband for the offences under Sections 306, 498(A) and 304(B) and Section 4 of Tamil Nadu Prohibition of Harassment of



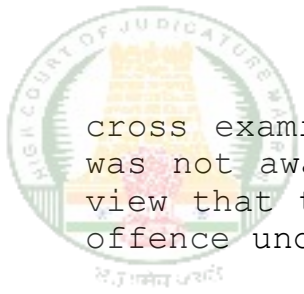
Women act. The final report was laid before the Judicial Magistrate, Thiruppathur. Cognizance of the offence was taken. Since they are exclusively triable by the Sessions Court, committal was made vide P.R.C.No.19 of 2006. The case was made over to the Assistant Sessions Judge, Sivagangai in S.C.No.51 of 2007. The four accused denied the charges and claimed to be tried. The prosecution examined as many as 13 witnesses and marked Ex.P1 to Ex.P10. M.O.1 to M.O.4 were also marked. On the side of the accused, a person residing in the locality was examined as D.W.1. The learned trial Judge, after a detailed consideration of the evidence on record, acquitted A2 to A4, but convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal has been filed.

3.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum. The learned Government Advocate (Crl.side) appearing for the prosecution submitted that the impugned Judgment does not warrant any interference.

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

5.It is not in dispute that the appellant and Kalaimehala got married on 08.06.2000 and that, on 19.08.2006, Kalaimehala committed suicide by hanging herself. It is not in dispute that the suicide took place in the matrimonial home where the appellant and Kalaimehala resided together. In support of its case, the primary witnesses examined by the prosecution are the parents of the deceased and the brother of the deceased. It can be seen from the testimony of the mother who is a vital witness that till a week prior to the occurrence, the deceased was residing only in the house of her parents. Since there was a festival in the village, the appellant wanted to take back the deceased to his house and that is how, the deceased returned to the matrimonial home a week prior to the occurrence. The prosecution witnesses have fairly stated that they did not know as to what happened during this one week. Section 304(B) of IPC which defines dowry death can be invoked only if it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry. The expression "soon before her death" is highly significant. If the husband was serious about his dowry demand, he will not take the wife back. The wife has not come out from the house with the condition that she, unless brings the dowry, she will not be taken back. In this case, the husband had gone to the house of his in-laws and demanded that the wife should come back to him. This clearly indicates the bonafides of the appellant.

6.From the evidence on record, I have to necessarily come to the conclusion that there is nothing to indicate soon before her death, the deceased was subjected to cruelty or harassment in connection with dowry demand. In fact, to a pointed question in the



cross examination, the mother of the deceased had stated that she was not aware as to what actually happened. I am therefore of the view that the Court below erred in convicting the appellant for the offence under Section 304(B) of IPC.

7. In this case, Kalaimehala committed suicide by hanging herself. But then, the appellant can be fastened with liability under Section 306 of IPC, only if it can be shown that he had abetted the commission of the suicide. The Hon'ble Supreme Court in the decision rendered in **Criminal Appeal No.93 of 2019 (Rajesh V.s State of Haryana)** dated 18.01.2019, 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 aforesaid ratio, I have to necessarily hold that even the elementary ingredients of 306 of IPC are absent in this case. Therefore, the conviction of the appellant for the offence under Section 306 of IPC is also set aside.

9. However, there is enough and more evidence to sustain the conviction of the appellant for the offence under Section 498(A) of IPC. In fact, the learned counsel appearing for the appellant submitted that having regard to the evidence on record, he would not challenge the guilt in respect of the offence under Section 498 (A) of IPC. The parents as well as brother have clearly deposed as to how the appellant had harassed her in very many ways. The appellant's counsel would only plead for reduction and modification



in the matter of sentence. The appellant had filed an affidavit before this Court. The appellant had expressed his sense of shame and regret for not having taking care of his children after the occurrence. The children are presently in the care and custody of the appellant's in-laws. The appellant had been in prison roughly for about six months. The appellant has come forward to sell the land that belongs to him which is comprised in Survey No.167/8 in Vadavampatti Village and deposit the sale proceeds in favour of his three children. This Court suggested to the appellant's counsel that the appellant can deposit a sum of Rs.10,00,000/- immediately and a further sum of Rs.5,00,000/- within a period of three years. The suggestion given by this Court is acceptable to the appellant.

10. Taking note to the offer made by this Court, this Court sustains the conviction of the appellant only in respect of the offence under Section 498(A) of IPC but modifies and reduces the sentence to the period already undergone by him. The conviction and sentence imposed on the appellant in respect of the other offences stand set aside. The appellant is directed to deposit a sum of Rs.3,00,000/- in favour of each of his children to the credit of S.C.No.51 of 2007 on the file of the Assistant Sessions Judge, Sivagangai, within a period of three months from the date of receipt of a copy of this order. The appellant shall deposit a further sum of Rs.6,00,000/- within a period of three years from the date of receipt of a copy of this order to the credit of S.C.No.51 of 2007 on the file of the Assistant Sessions Judge, Sivagangai. On each such deposits, the learned trial Magistrate shall take steps through the District Legal Service Authority to ensure that the amount shall be deposited in an interest bearing account with a nationalised Bank. The guardian of the appellant's children will be entitled to withdraw the interest once in three months. When the children attain majority, the deposited amount will be handed over to them. When the appellant deposited the balance amount of Rs.6,00,000/- within three years, the same shall also be equally divided and deposited in the name of each child of the appellant. If the appellant fails to adhere this condition to deposit the compensation amount, the appellant will have to undergo the default sentence of one year simple imprisonment. The period of incarceration already undergone by the appellant will not be set off as this is a default sentence imposed on the appellant. The criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

<https://hcservices.ecourts.gov.in/hcservices/>
1 The Assistant Sessions Judge,
Sivagangai.



2 The District Munsif-Cum-Judicial Magistrate,
Sivagangai.

3 The Inspector of Police,
S.S.Kottai, Sivagangai District.

4 The Officer In-Charge,
District Legal Services Authority,
Sivagangai District.

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

+1. C.C. to M/S.M.SUBASH BABU, Advocate SR.No. 77413

Cr1.A(MD)No.202 of 2010
23.07.2019

RMI
JM/05.09.2019/6P/7C