

**BAIL SLIP**

Rajamohamed, S/o.Sakubar Ali, Male, aged 25/2010 years is released on bail vide Court order dated 14.12.2010 made in MP(MD) No.1 of 2010 in CRL A(MD)No.436 of 2010.

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 16.07.2019****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Crl.A.(MD)No.436 of 2010**

Rajamohamed

... Appellant/Sole Appellant

Vs.

State Rep. by  
The Inspector of Police,  
Sakkottai Police Station,  
Sivagangai District.  
(Crime No.59 of 2007)

... Respondent/Complainant

**Prayer:** Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records from the Lower Court and set aside the judgment of the Lower Court passed by the learned Assistant Sessions Court, Devakkottai, Sivagangai District in S.C.No.45 of 2008, dated 22.09.2010, by allowing this appeal.

For Appellant : Mr.V.K.Srinivasan

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

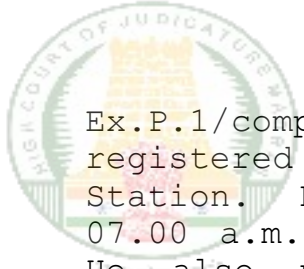
**JUDGMENT**

The appellant was tried for the offence under Section 306 of I.P.C. r/w Section 4(b)(2) of Tamil Nadu Prohibition of Harassment of Woman Act, in S.C.No.45 of 2008, on the file of the learned Assistant Sessions Judge, Devakkottai by judgment dated 22.09.2010. The Trial Court found the accused guilty of the offence with which he was charged and sentenced him to undergo seven years rigorous imprisonment. He was also levied with fine of Rs.50,000/-. Default sentence was also imposed.

2.The prosecution case is that P.W.1 had a daughter by name Jothi. On 10.04.2007, when after attending the village festival at around 11.45 p.m. she was returning to her house, the appellant is said to have waylaid her and compelled her to marry him. Since the deceased refused the advances of the appellant, the appellant pulled her dupatta. In continuation of this incident, overcome by a sense of shame, Jothi committed suicide by self-immolating herself on 13.04.2007 at about 03.45 a.m.

<https://hcservices.ecourts.gov.in/hcservices>

3.P.W.1 is the father of the deceased/Jothi, who lodged



Ex.P.1/compliant. Based on the same, Crime No.59 of 2007 was registered on the file of the Inspector of Police, Sakkottai Police Station. P.W.7, the Inspector of Police went to the spot at around 07.00 a.m. on 13.04.2007 and prepared observation mahazer/Ex.P.2. He also prepared Ex.P.6/rough sketch. He thereafter seized M.O.1/kerosene can. He arranged the holding of inquest as well as postmortem. He enquired all the relevant witnesses and completed all the formalities. At that stage, P.W.8 was transferred. Thereafter, one Marimuthu, Circle Inspector filed the final report against the appellant for the offence under Section 306 r/w 4(b) (2) of Tamil Nadu Prohibition of Harassment of Woman Act, before the learned Judicial Magistrate, Karaikudi. The case was committed to the Sessions Court in P.R.C.No.3 of 2008. It was made over to the learned Assistant Sessions Judge, Devakottai in S.C.No.45 of 2008. Charges were framed under Section 306 r/w. 4(b) (2) of Tamil Nadu Prohibition of Harassment of Woman Act, against the appellant. The appellant denied the charges and claimed to be tried.

4.The prosecution examined as many as 8 witnesses and marked Exs.1 to 7. M.O.1/Kerosene can was also marked. On the side of the accused one Mohideen @ Raja Mohideen was examined as D.W.1. Incriminating circumstances were put to the accused, while examining him under Section 313 of Cr.P.C. He denied them as false.

5.The learned Trial Judge after a detailed consideration of the evidence on record by the impugned judgment found the appellant guilty of the offence with which he was charged and convicted and sentenced him as mentioned above. Challenging the same, this criminal appeal has been filed.

6.Heard the learned counsel on either side.

7.The learned counsel appearing for the appellant submitted that the deceased/Jothi committed self immolation only in the early hours of 13.04.2007. But then, the trigger for the said suicide is alleged to have taken place on 10.04.2007 at about 11.45 p.m. According to the appellant's counsel P.W.7 had deposed that on 12.04.2007, when he was in charge of the station, one Jothe, who is the daughter of Veerappan appeared before him and lodged a complaint. Based on which, he registered Crime No.55 of 2007 for the offence under Section 354 of I.P.C. However, the original complaint given by her was not produced. What was produced was only a photocopy of Jothe's complaint. It was marked as Ex.P.5 subject to objection. It was also noted that the accused was not furnished with copies of the same in terms of Section 207 of Cr.P.C. P.W.7 would further claim that since Jothe passed away, further action was not taken in this case. In Ex.P.5, P.W.1 is said to have signed. In the cross examination, it was suggested that there is a discrepancy between the deposition of P.W.1/Veerappan and the contents of Ex.P.5. It was specifically suggested to P.W.7 that Jothe never lodged any complaint on 12.04.2007 and that it had been



fabricated for the purpose of this case. The said suggestion was however denied by P.W.7.

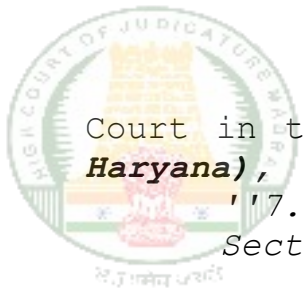
8.It is not in dispute that Jothi died due to self immolation. In this regard P.W.1/Veerappan lodged a complaint before Sakkottai Police Station at about 06.00 a.m. on 13.04.2007. Based on the statement of P.W.1, Crime No.59 of 2007 was registered under Section 306 r/w. Section 4(b)(2) of Tamil Nadu Prohibition of Harassment of Woman Act. Final report in this case was filed based on the investigation undertaken on this complaint.

9.The appellant's counsel would seriously fault the conduct the of respondent. According to him, the occurrence took place in the early hours of 13.04.2007. It was only a continuation of what was alleged to have happened on the night of 10.04.2007. Jothi had given a complaint and the same was also registered as FIR. There was no need for registering one more crime number. The respondent ought to have filed only the alteration report.

10.The appellant's counsel also states that the entire prosecution case rests on the testimony of P.W.2 and P.W.3. Admittedly, P.W.1 had not witnessed the occurrence. P.W.2 is a close relative and P.W.3 is only the friend of P.W.2. The appellant's counsel drew my attention to the rough sketch/Ex.P.6, when the occurrence had taken place near midnight, there is nothing to show that the light was available for the eye witnesses, who have seen the accused. In the rough sketch no such electric pole has been shown. The appellant's counsel would therefore cast serious doubt on the occurrence also. If Jothi had died in the manner suggested by the prosecution, certainly efforts would have taken to break open the house and to rescue her. No one seems to have taken any such effort.

11.The other contention urged by the appellant's counsel is that the appellant cannot be said to have goaded the victim/Jothi to commit suicide. He would submit that the elementary ingredients of Section 306 of I.P.C. are wholly absent in this case.

12.I concur with this contention of the appellant's counsel that the Court below erred in convicting the appellant for the offence under Section 306 of I.P.C. Even according to the charge, there was only solitary act of molestation of Jothi by the appellant on 10.04.2007 around midnight. The prosecution alleges that the appellant pulled her dupatta. This attracted the attention of P.W.2 and P.W.3 to come to her rescue. Self immolation took place at about 03.45 a.m. two days before. There is a clear time gap between the act attributable to the appellant and the commission of suicide by Jothi. According to the prosecution, the appellant wanted to marry her. There is nothing on record to show that he wanted Jothi to die. If unable to bear the entire stress and probably overcome by a sense of shame, Jothi had committed suicide, the appellant cannot be fastened with penal liability. The Honourable Supreme



Court in the decision in **Cr1.A.No.93 of 2019 (Rajesh Vs. State of Haryana)**, dated 08.01.2019, 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.



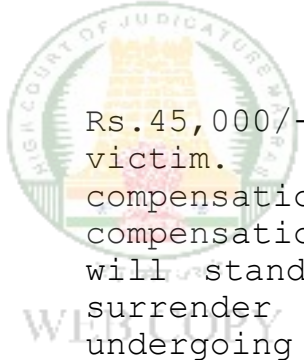


interfere with the conviction passed by the Court below under Section 4(b)(2) of Tamil Nadu Prohibition of Harassment of Woman Act. P.W.1 is the father of the deceased. He had clearly stated that the deceased went to the police station and levelled an allegation against the appellant. P.W.2 is a cousin of the deceased/Jothi. He had clearly narrated the entire sequence of events. When Jothi's house was almost near, P.W.2 had asked whether she will manage to go on her own. Since Jothi said that she will go on her own, he allowed her to go on her own. At that moment, the appellant had waylaid Jothi and pulled her dupatta. When Jothi raised an alarm, P.W.2 and P.W.3 rushed to the spot. Upon seeing them, the appellant ran away. When P.W.2 enquired Jothi as to what happened, Jothi had told him that the appellant is working in a grocery shop and that he is demanding that Jothi should marry him. Since it was already past midnight, P.W.2 had told her that they can look into the matter the next day. P.W.2's testimony seriously indicts the appellant. He was cross examined at length. The testimony of P.W.2 could not be shaken in the cross examination also. P.W.2 identified the appellant in the Court also. In fact P.W.2 would assert that after the occurrence on 10.04.2007, he had seen the accused only in the Court hall.

15.P.W.3, who is the friend of P.W.2 had also deposed on the same lines as that of P.W.2.

16.Of course, the appellant's counsel would try to raise a doubt by contending that act of molestation or harassment was by some other Raja Mohideen, who was working in grocery shop and that it was a case of mistaken identity. The appellant's counsel would draw my attention to the testimony of D.W.1. The said D.W.1 had deposed that he was running a grocery shop that he had described in the complaint. The accused was not employed under him. But then in the cross examination, it was clearly elicited that D.W.1 was a close relative of the appellant. Therefore, as rightly pointed out by the learned Government Advocate (Crl. Side), his testimony cannot inspire the confidence of this Court. Therefore, even while I set aside the conviction of the appellant for the offence under Section 306 of I.P.C., I sustain the conviction imposed by the Court below on the appellant for the offence under Section 4(b)(2) of Tamil Nadu Prohibition of Harassment of Women Act.

17.Now comes the question of sentence. The appellant was aged around 25 years during the relevant time. More than 12 years have elapsed. He is said to have married and he is having two daughters. It is also seen that except the act attributed in the charge, he has not done anything more than that. Therefore, I am of the view that interest of justice will be served by sentencing the appellant to undergo five months rigorous imprisonment. The appellant was in prison for about four months. The period of incarceration already undergone by him will be set off in terms of Section 428 of Cr.P.C. The fine of Rs.50,000/- imposed is confirmed. Out of the said fine amount of Rs.50,000/- a sum of



Rs.45,000/- will be paid as compensation to P.W.1, the father of the victim. The appellant is given two months time to remit the compensation amount. If the appellant fails to remit the compensation amount, the default sentence imposed by the Court below will stand automatically restored. The appellant undertakes to surrender before the Trial Court on or before 13.09.2019 for undergoing the remaining period of the sentence. The criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To:

- 1.The Judicial Magistrate, Karaikudi.
- 2.The Chief Judicial Magistrate, Sivagangai District.
- 3.The Assistant Sessions Court,  
Devakkottai, Sivagangai District.
- 4.The Principal Sessions Judge, Sivagangai District.
- 5.The Superintendent, Central Prison, Trichy.
- 6.The Inspector of Police,  
Sakkottai Police Station,  
Sivagangai District
- 7.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)

+1 CC to M/s.V.S.BADRINATH, Advocate ( SR-75563[F] dated  
16/07/2019 )

**Crl.A. (MD) No.436 of 2010**  
**16.07.2019**

\_KK/SAR/03.09.2019/7P-11C/