



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.10.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1.RC(MD)No.47 of 2010

Murugesan .. Petitioner/P.W.1/
Defacto Complainant

1.Packiam Vs. ..1st Respondent/Appellant/
Sole Accused

2.State through
The Inspector of Police,
Bodi Town Police Station,
Theni District.
(Crime No.204 of 2004) ..2nd Respondent/Respondent/
Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records pertaining to the judgment passed by the learned Principal District and Sessions Judge, Theni, in C.A.No.34 of 2008, dated 27.10.2009 reversing the judgment of conviction made in S.C.No.44 of 2006 on the file of the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Theni, dated 15.05.2008, and set aside the same and convict the 1st respondent/sole accused for the offence of Sec.306 of I.P.C, by allowing the present Criminal Revision Petition.

For Petitioner : Mr.A.Saravanan

For Respondents : Mr.T.Antony Arul Raj
for R.1

Mr.K.K.Ramakrishnan
Additional Public Prosecutor for R.2

O R D E R

This Criminal Revision Case is filed by the petitioner / defacto complainant [PW1] as against the order of acquittal passed by the learned Principal District and Sessions Judge, Theni, in C.A.No.34 of 2008, dated 27.10.2009.



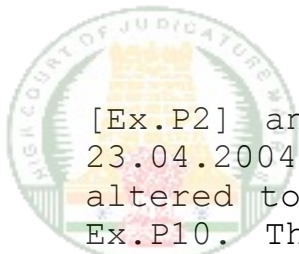
2. The first respondent / sole accused was tried for the offence under Section 306 IPC before the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Theni, in S.C.No.44 of 2006 and the trial Court, in conclusion of the trial, by judgment dated 15.05.2008, found the first respondent / sole accused guilty for the offence under Section 306 IPC, convicted and sentenced her to undergo rigorous imprisonment for seven years and to pay a fine of Rs.50,000/-, i/d to undergo rigorous imprisonment for five months. On appeal filed by the first respondent before the Principal District and Sessions Court, Theni, the lower appellate Court reversed the finding of the trial Court and acquitted the accused. Aggrieved over the same, the defacto complainant [PW1] has filed the instant criminal revision case.

3. The brief facts of the case, in a nutshell, are as follows:

3.1. The deceased, namely, Muthumani, is the daughter of the revision petitioner and wife of the accused's elder son, namely, Kumar [PW3]. The marriage between the deceased and PW3 was solemnised in the year 1996 and at the time of marriage, the revision petitioner provided 20 sovereigns of gold jewels to his daughter. After a year, the accused arranged a marriage for her second son with one Neelavathi [PW4], who came with 50 sovereigns of gold jewels. Since the deceased has brought meagre amount of gold jewels, comparing to the second daughter-in-law, the accused harassed her and humiliated right from the marriage. On 21.04.2004, at about 08.15 am, the accused has commented on the fidelity of the deceased and scolded that "despite such comments, why should you be alive?". Triggered by these words, the deceased on 21.04.2004, consumed poison to commit suicide.

3.2. The mother of the deceased, Sangareswari [PW2] brought the deceased to Nataraj Clinic, Bodi, on 21.04.2004, around 09.00 am. Dr.Velraj [PW8] attended the deceased and he was informed by PW2 that the deceased was her daughter and that she consumed pesticide. The Doctor gave first aid and for further treatment, referred her to Mani Hospital, Theni. Dr.Murugesan [PW10] of Mani Hospital attended the deceased on 21.04.2004 at about 10.15 am and he was informed by PWs.2 & 3 that the deceased consumed pesticide - Endosulfan. According to the Doctor, she developed continuous Epilepsy and he admitted her in the Intensive Care Unit and despite treatment, the deceased died on 23.04.2004 at 08.15 am. The certificate issued by the Doctor [PW10] is marked as Ex.P5.

3.3. On receipt of information from the Hospital, the Sub-Inspector of Police [PW14] obtained the statement [Ex.P1] from PW1 and registered a case in Crime No.204 of 2004, for the offence under Section 309 IPC. The printed FIR is marked as Ex.P8. He examined the witnesses and prepared the observation mahazar



[Ex.P2] and rough sketch [Ex.P10]. On receipt of information on 23.04.2004, as to the death of the deceased, the offence was altered to Section 306 IPC and the alteration report is marked as Ex.P10. The further investigation in this case was conducted by Thiru Kulam [PW13] and thereafter, by Thiru Seetharaman [PW15], who, after receiving the postmortem report and the chemical analysis report, filed the final report as against the first respondent / accused.

3.4. The trial Court, in conclusion of the trial, found the first respondent / accused guilty for the offence under Section 306 IPC, convicted and sentenced her as stated supra. However, on appeal, the lower appellate Court reversed the finding and acquitted the first respondent. Aggrieved over the same, the defacto complainant [PW1] has preferred the instant revision case.

4. Heard Mr.A.Saravanan, learned Counsel appearing for the revision petitioner, Mr.T.Antony Arul Raj, learned Counsel appearing for the first respondent and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the second respondent.

5. The learned Counsel appearing for the revision petitioner would submit that the deceased is the wife of the elder son of the accused, namely, Kumar. At the time of marriage, the revision petitioner provided 20 sovereigns of gold to his daughter / the deceased. Thereafter, the accused arranged marriage for her second son, namely, Sukumar with PW4, who came with 50 sovereigns of gold. Since the deceased came with less amount of gold ornaments, the accused developed hatred and told the deceased to get out from the matrimonial house. In continuance of the said torture, on 21.04.2004, at about 08.15 am, the accused commented on the fidelity of the deceased and questioned, "despite such comments, why you should be alive?" Hence, the deceased consumed the poison - Endosulfan.

6. The learned Counsel would further submit that PW2, the mother of the deceased, in her evidence, has categorically deposed that on the comments made by the accused and on her instigation, the deceased consumed the poison. This evidence of PW2 is supported by the evidence of PW6, the uncle of the deceased. The Doctor [PW10], who treated the deceased in the Mani Hospital, Theni, has deposed that the deceased developed continuous Epilepsy, which is one of the outcomes of consuming poison. Taking these aspects into account, the trial Court has rightly convicted the accused. However, the lower appellate Court, on the ground that the prosecution has failed to prove that the deceased consumed Endosulfan, scientifically, acquitted the accused. Therefore, he prays for interference.



7. The learned Counsel appearing for the first respondent / accused made his submissions in line with the judgment passed by the lower appellate Court. He would submit that it is the mother of the deceased [PW2], who informed the other prosecution witnesses, including the Doctors, that the deceased consumed the pesticide - Endosulfan. However, the prosecution, by means of scientific evidence, has not proved that the deceased consumed Endosulfan or any other poison.

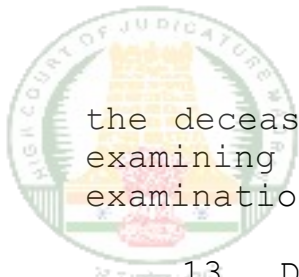
8. The learned Counsel would further submit that in the complaint [Ex.P1], PW1 has stated that there was frequent quarrel between his daughter and the accused with regard to the taking care of the deceased's children. Nowhere in the complaint, PW1 has mentioned about the alleged harassment made by the accused pursuant to the marriage of her second son with PW4. It is, in fact, an exaggerated improved version, which, the lower appellate Court has rightly rejected. Therefore, he prays for dismissal.

9. This Court has also heard the submissions made by the learned Additional Public Prosecutor appearing for the second respondent / State.

10. The marriage between the deceased and PW3 took place on 25.10.1996. The occurrence took place on 21.04.2004, nearly after eight years from the marriage. According to the prosecution, PW2 informed her husband [PW1] that their daughter consumed the pesticide - Endosulfan and was hospitalized in Mani Hospital, Theni. She also informed her son-in-law [PW3] about the occurrence. The second respondent Police obtained a statement [Ex.P1] from PW1 in the Mani Hospital, Theni and registered the case.

11. Perusal of records would go to show that it is the mother of the deceased, PW2, who informed the other prosecution witnesses, including the Doctors that the deceased consumed the pesticide - Endosulfan. Doctor Velraj [PW8], Natraj Clinic, Bodi, who attended the deceased at first, in his evidence, has deposed that PW2 informed him that the deceased consumed the pesticide and that after giving the first aid treatment, he referred the deceased to Mani Hospital, Theni, for further treatment.

12. Dr.Murugesan [PW10], who attended the deceased at Mani Hospital, Theni, has also deposed that he was informed by PW2 & PW3 that the deceased consumed pesticide. He further deposed that the deceased developed continuous Epilepsy, due to which, she died. On a suggestion made by the prosecution, he deposed that Epilepsy is one of the outcomes of consuming poison. Though the Doctor has stated that traces of the poison would be present in the body, if



the deceased has consumed poison and that it can be identified by examining the saliva and blood, he admitted that no such examination was conducted.

13. Doctor Ravindranath [PW11] conducted postmortem on the body of the deceased and the postmortem certificate is marked as Ex.P6. The Doctor [PW11] has deposed that he sent the viscera for chemical analysis and the chemical analysis report [Ex.P7] reads that the nature of death could not be detected. The Doctor has admitted that if a person dies on account of consuming poison, the traces of the poison would be available in the viscera. The Scientific Analyst [PW12], Forensic Science Laboratory, Madurai, has deposed that on examination, the presence of insecticide or any other poison was not detected in the viscera sent for analysis.

14. The Doctors [PW8 & PW10], who gave treatment to the deceased, have only stated that they were informed by the person, who admitted the deceased, about the consumption of poison. This fact, coupled with the evidence of the Doctor [PW11], who conducted postmortem and the Scientific Analyst [PW12], it is clear that the prosecution has not established that the deceased consumed any poison. That apart, the investigation officer [PW13], though has stated that the poison bottle is empty, has not recovered the alleged empty bottle.

15. Apart from the above ground, the lower appellate Court has also taken note of the discrepancy with regard to the place of occurrence. According to PW2, she took the deceased to the Hospital from her house. This version of PW2 is supported by the rest of the prosecution witnesses. But, the observation mahazar prepared by the prosecution shows the occurrence place as the accused's house. It is not known as to whether the deceased consumed poison in the accused's house or in PW2's house and there is no investigation in this regard.

16. The accused was prosecuted for the offence under Section 306 IPC. For better appreciation, Section 306 IPC is extracted thus:

"306 - 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."

17. As per the above, whoever abets a person to commit suicide is liable to be prosecuted. The word 'abetment' is defined under Section 107 IPC and for better understanding, the same is extracted thus:



"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."

18. The words like 'go and die', 'better die today than tomorrow', or like in the case on hand 'despite such comments, why you should be alive?' are uttered during quarrels. Such words cannot be given literal meaning so as to say that the accused had abetted the commission of suicide. To constitute the abatement, it should be established by means of acceptable evidence by the prosecution that the accused had the animus to drive the woman to commit suicide. Mere uttering of such words, by itself will not constitute such abetment. The words uttered due to outburst of one's own fatuity or anger or consternation without any intention or knowledge will not constitute an offence. The prosecution has to prove beyond reasonable doubt that the accused has instigated the deceased to commit suicide.

19. In similar circumstances, the Hon'ble Supreme Court in **Sontui Rama Krishna v. Sonti Shanti Sree & another**, reported in **AIR 2009 SC 923**, has held that to constitute the abatement, it should be established by means of acceptable evidence that the accused had the animus to drive the woman to commit suicide.

20. The Hon'ble Supreme Court, in its latest decision, in **Rajesh v. State of Haryana**, reported in **2019 SCC OnLine SC 44** has held as follows:

"9. 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



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*, reported in (2010) 1 SCC 707).

10. The term instigation under Section 107 IPC has been explained in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, reported in (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367, as follows:

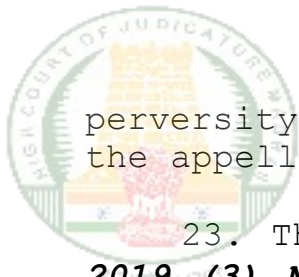
"16. Speaking for the three-Judge Bench in *Ramesh Kumar case* [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088], *R.C.Lahoti, J.* (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not 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 "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.*)."

11. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. [See *Praveen Pradhan v. State of Uttaranchal*, reported in (2012) 9 SCC 734]"

21. In view of the discrepancies and contradictions pointed out supra and taking note of the aforesaid decisions, the lower appellate Court, in the opinion of this Court, has rightly reversed the finding of the trial Court and acquitted the accused.

22. That apart, the scope of Criminal Revision under Section 397 r/w 401 Cr.P.C. is very limited and this Court cannot re-appreciate the evidence, unless and until there is a illegality,



perversity or impropriety in the findings of the trial Court and the appellate Court.

23. This Court in **Anbarasu Vs Mukanchand Bothra**, reported in **2019 (3) MWN (Cr) DCC 1(Mad)**, has held that while exercising the revisional powers under Section 397 r/w 401 Cr.P.C., the Court is required to find out whether there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum.

24. The grounds raised by the petitioners do not lead to any illegality, perversity or impropriety in the findings of the appellate Court, as such, this Court is not inclined to interfere with the impugned judgment of acquittal passed by the learned Principal District and Sessions Judge, Theni, in C.A.No.34 of 2008, dated 27.10.2009.

25. In fine, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk

To

1.The Principal District and Sessions Judge,
Theni.

2.The Assistant Sessions Judge
cum Chief Judicial Magistrate,
Theni.

3.The Inspector of Police,
Bodi Town Police Station,
Theni District.

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



5.The Record Keeper / Section Officer-2 copies
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.T.ANTONY ARUL RAJ, Advocate (SR-92882[F] dated
18/10/2019)

**Crl.RC(MD)No.47 of 2010
18.10.2019**

KM (20.01.2021) 9P 8C