



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD)No.183 of 2013

Murugesan

... Appellant/PW1

Vs.

1.The State represented by
The Inspector of Police,
Eruvadi Police Station,
Tirunelveli District.

... Respondent/Complainant

2.Durai Raj

3.Rani

4.Gnanammal

... Respondents/Accused Nos.1 to 3

Prayer: Criminal Appeal filed under Section 372 of Cr.P.C, to call for the records and set aside the judgment passed by the learned Assistant Sessions Judge, Valliyoor, Tirunelveli District in S.C.No.196 of 2009, vide his judgment dated 22.03.2013 and consequently convict the respondents No.2 to 4 by imposing maximum punishment provided under the law.

For Appellant

: Mr.P.Gunasekaran

For Respondent

: Mr.A.Robinson

Government Advocate (Crl. Side) for R1

: R2 to R4 Service awaited

J U D G M E N T

The respondents 2 to 4 herein were prosecuted for the offence under Section 306 of I.P.C. in S.C.No196 of 2009, on the file of the learned Assistant Sessions Judge, Valliyoor, Tirunelveli District. By judgment dated 22.03.2013, they were acquitted. This criminal appeal came to be filed by P.W.1, who is none other than the brother of the deceased.



2.The case of the prosecution is that the deceased Sudalai Kannu was having an affair with one Deepa. This was objected too by one Mani and the respondents 2 to 4 herein. They had also set to have assaulted Sudalai Kannu. This had happened on 19.11.2008 at about 07.00 a.m. Unable to bear the embarrassment caused by the accused, Sudalai Kannu consumed poison in the afternoon on the said date and died. In this regard, Crime No.158 of 2008 was registered on the file of Eruvadi Police Station, based on Ex.P.1/complaint given by the appellant herein. Investigation was undertaken and final report came to be filed before the learned Judicial Magistrate, Nanguneri. Cognizance of the offence under Section 306 of I.P.C. was taken. The case was committed to Sessions Court vide P.R.C.No.19 of 2009. The case was taken up for trial in S.C.No.196 of 2009. In the meanwhile, A1/Mani passed away. The respondents 2 to 4 herein alone were available to face trial. Charge under section 306 of I.P.C was framed against the three accused. They denied the charges and claimed to be tried.

3.The prosecution examined as many as 12 witnesses and marked Exs.1 to 9. M.O.1 to M.O.3 were also marked.

4.The learned Trial Judge after detailed consideration of the evidence on record, by the impugned judgment dated 22.03.2011 acquitted the accused of all charges.

5.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to reverse the judgment of the Court below.

6.According to the prosecution, the affair between the deceased and one Deepa was the cause for the accused picking up a quarrel with the deceased. But then, the prosecution did not examine the said Deepa. This has been categorized as a fatal lacuna by the learned Trial Judge. That apart all that accused have done was only to express their disapproval of the relationship between the deceased and Deepa. It is quite possible that they had beaten the deceased/Sudalai Kannu also. But then, by no such imagination, the accused can be said to have intended that Sudalai Kannu/deceased should commit suicide. The scope of Section 306 of I.P.C. has been recently dealt with by the Honourable Supreme Court in the decision reported in [AIR 2019 SC 478, (Rajesh Vs. State of Haryana)], the Honourable Supreme Court 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.



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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 (Crl.) 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



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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.

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 3).''

7. Applying the principles laid down in the aforesaid decision, I have to necessarily observe that the learned Trial Judge adopted the right approach. I find no ground to interfere and the criminal appeal stands dismissed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS)

To:

1. The Assistant Sessions Judge,
Valliyoor,
Tirunelveli District
2. The Inspector of Police,
Eruvadi Police Station,
Tirunelveli District.



Copy to:

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

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