



Bail Slip

T.Ramasamy, (M) (32), S/o.Thirumalnadar,

The Appellant/Sole Accused

Accused was already released on bail vie this Court,
ordered dt.31.07.2013 Cr1 A(MD)No.242 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 A(MD)No.242 of 2013

T.Ramasamy

... Appellant

Vs.

State, rep.by
The Inspector of Police,
Aralvoimozhi Police Station,
Kanyakumari District.

... Respondent

(Crime No.168 of 2008)

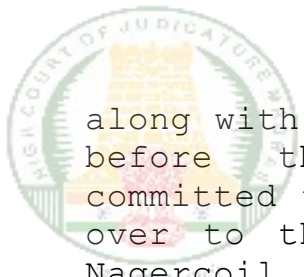
Prayer : This Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, to call for the records relating to the judgment dated 08.04.2013 made in S.C No.108 of 2010 on the file of the Assistant Sessions Judge cum Chief Judicial Magistrate, Nagercoil and set aside the same.

For Appellant : Mr.T.Antony Arulraj
For Respondent : Mr.A.Robinson, Government Advocate
(crl.side)

JUDGMENT

The appellant was convicted for the offence under Section 306 IPC and sentenced to five years rigorous imprisonment vide judgment dated 08.04.2013 made in S.C No.108 of 2010 on the file of the Assistant Sessions Judge cum Chief Judicial Magistrate, Nagercoil.

2.The case of the prosecution is that on 07.09.2005, the appellant got married to Baghavathiyammal, the sister of P.W.1 Nallaperumal. Baghavathiyammal committed suicide by consuming poison on 21.06.2008 at about 02.00 P.M and she died on the next day. In this regard, P.W.1 Nallaperumal lodged information before Aralvoimozhi police station leading to registration of Ex.P10 FIR in Crime No.168 of 2008 under Section 174 of Cr.PC. Later alteration report was filed on 27.06.2008 vide Ex.P14. Investigation was completed and final report came to be filed



along with alteration report for the offence under Section 306 IPC before the Judicial Magistrate, Poothapandi. The case was committed to the Sessions Court in PRC No.4 of 2010. It was made over to the Assistant Sessions Judge/Chief Judicial Magistrate, Nagercoil in S.C No.108 of 2010. The charge under Section 306 IPC was framed against the appellant. The appellant denied the charge and claimed to be tried. The prosecution examined as many as 12 witnesses and marked Exs.P1 to P.14. On the side of the accused, no evidence was adduced. The learned trial judge after a detailed consideration of the evidence on record, chose to convict the appellant for the offence under Section 306 IPC and sentenced him to undergo five years rigorous imprisonment by the impugned judgment. Challenging the same, this appeal came to be filed.

3.The learned counsel appearing for the appellant reiterated all the contentions set out in the appeal memorandum and wanted this Court to acquit the appellant of the charge under Section 306 IPC. Per contra, the learned Government Advocate (crl.side) submitted that the impugned judgment does not warrant any interference and wanted this Court to dismiss this appeal.

4.P.W.1 and P.W.2 are the brothers of the deceased. P.W.3 is a neighbor. P.W.4 and P.W.5 are Mahazar Witnesses. P.W.6 is the doctor who conducted autopsy. P.W.7 produced the body for postmortem. P.W.8 is the S.I of Police who registered the FIR. P.W.9 conducted the inquest. P.W.10 and P.W.12 are the Inspectors of Police who had conducted a part of the investigation. P.W.11 completed the investigation and filed final report. A careful reading of the evidence of P.W.1 to P.W.3 would only indicate that the appellant was addicted to alcohol and used to harass his wife Bhagavathiyammal to part with her jewellery. P.W.3 would state that on the occurrence date, the appellant/accused demanded that his wife should give away her ear-studs. From this one cannot come to the conclusion that the appellant wanted his wife to die. The Hon'ble Supreme Court in the decision reported in **AIR 2019 SC 478** (Rajesh vs. State of Haryana) held as follows :

"8.Conviction Under Section 306 Indian Penal Code 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 Indian Penal Code, 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



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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 Indian Penal Code. (See Amalendu Pal alias Jhantu v. State of West Bengal (2010) 1 SCC 707).

9. The term instigation Under Section 107 Indian Penal Code has been explained in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 16 SCC 605: (2010) 3 SCC (Crl.) 367) as follows:

"16. Speaking for the three-Judge Bench in Ramesh Kumar case [MANU/SC/0654/2001 : (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.).

10. Words uttered in a fit of anger or omission without any intention cannot be termed as



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instigation. (See Praveen Pradhan v. State of Uttaranchal : (2012) 9 SCC 734).

11. We are of the opinion that the evidence on record does not warrant conviction of the Appellant Under Section 306 Indian Penal Code. There is no proximity between the Panchayat held in September, 2001 and the suicide committed by Arvind on 23.02.2002. The incident of slapping by the Appellant in September, 2001 cannot be the sole ground to hold him responsible for instigating the deceased to commit suicide. As the allegations against all the three Accused are similar, the High Court ought not to have convicted the Appellant after acquitting the other two Accused."

Applying the ratio laid down in the aforesaid decision, this Court can safely come to the conclusion that even the elementary ingredients of Section 306 of IPC are not present in this case.

5. That apart, it has been elicited by the accused that Bhagavathiyammal was earlier married to one Sasikumar. The marriage between Sasikumar and the deceased ended in divorce. This was for two reasons. Bhagavathiyammal was suffering from epilepsy. She was also incapable of conceiving. On these two grounds, the marriage between Bhagavathiyammal and Sasikumar was dissolved. The marriage with the appellant took place thereafter. As already pointed out, the appellant hails from Thoothukudi. The matrimonial home was initially established only at Thalaimuthu Nagar, Thoothukudi. But then, Bhagavathiyammal picked up fights and quarrel with her in-laws as well as neighbors. Therefore, P.W.1 decided to bring both his sister as well as his brother in law to Nagercoil. P.W.1 in his evidence states that he established an independent matrimonial home for his sister and brother in law. From this one can come to the conclusion that Bhagavathiyammal was even otherwise under some kind of inner stress. P.W.3 Santhi would also state that right from this inception, there were quarrels between husband and wife. Therefore, I am of the view that the appellant cannot be blamed for committing suicide by Bhagavathiyammal.

6. That apart, as rightly pointed out by the appellant's counsel, the witnesses have improved their version considerably. During inquest, their statements were taken. But then, the evidence given by them before the court appears to be substantial improvements over what was already stated before the Revenue Divisional Officer. The learned counsel for the appellant's counsel drew my attention to the decision of the Hon'ble Supreme Court reported in **(2011) 1 MLJ (Cr1) 672 (SC) (S.K.S.Gupta vs. State of Maharashtra)**. Paragraph No.16 of the said decision reads



as follows :

16. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the Court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide State of Rajasthan vs. Rajendra Singh, (2009) 11 SCC 106).

7. Approaching the issue from this perspective, it is difficult to fasten the blame on the appellant for committing of suicide by Bhagavathiyammal. Therefore, I am of the view that the court below erred in convicting the appellant for the offence under Section 306 IPC. Therefore, the conviction as well as sentence imposed on the appellant for the said offence stands set aside. But that cannot be the end of the matter. There is sufficient evidence available before this Court to come to the conclusion that the appellant harassed his wife and demanded that she should part with her ear-studs. It clearly amounts to cruelty under Section 498 A of IPC. It is true that the appellant was not charged with the said offence of cruelty. But then, non framing of the charge will not in any way cause prejudice to the accused. Section 222 of Cr.PC reads as follows :

"222. When offence proved included in offence charged :

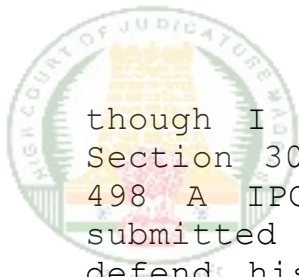
(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied."

8. In view of the materials already available on record, even



though I acquit the appellant in respect of the offence under Section 306 IPC, I hold him guilty of the offence under Section 498 A IPC. The learned counsel appearing for the appellant submitted that the appellant could not even engage a counsel to defend his case. During trial NBW was issued and he was secured. He did not come out on bail. It is stated that the appellant was in prison for about six months. Therefore, I am of the view that interest of justice will be served by reducing the sentence of imprisonment to the period already undergone by him.

9. With this modification in the matter of conviction and sentence, this appeal is partly allowed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar (CS)

Skm

To

1. The Assistant Sessions Judge
cum Chief Judicial Magistrate, Nagercoil.
2. The Judicial Magistrate, Boothapandi, Kanyakumari
3. Do Thro'
The Chief Judicial Magistrate,
Kanyakumari District at Nagercoil
4. The Superintendent, Central Prison
Palayamkottai, Tirunelveli
5. The Inspector of Police, Aralvoimozhi Police Station,
Kanyakumari District.
6. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s. T. ANTONY ARUL RAJ, Advocate (SR-82096[F] dated 16/08/2019)

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16.08.2019

KM/ (11.10.2019) 6P 8C