



Bail Slip

Pandi @ Welding Pandi, S/o.Karuppaiah, aged about 25 years was released on bail vide Court order dated 21.11.2013 made in MP (MD) .No.1/2013 in Crl.A. (MD) .No.330 of 2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD)No.330 of 2013

Pandi @ Welding Pandi

... Appellant/Accused No.1

Vs.

State rep. by
The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.
(Crime No.1139 of 2010)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C, to call for the records relating to the judgment passed in S.C.No.44 of 2012, dated 08.11.2013, on the file of the Magalir Neethimandram (Fast Track Mahila Court), Dindigul and set aside the same and acquit the appellant/accused of all the charges leveled against him.

For Appellant : Mr.R.Venkateswaran

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offence under Section 306 of I.P.C. and sentenced to five years rigorous imprisonment a fine of Rs.1,000/- was levied, vide judgment dated 08.11.2013 in S.C.No.44 of 2012, on the file of the learned Magalir Neethimandram, Fast Track Mahila Court, Dindigul.

2.The case of the prosecution is that the accused namely., Pandi @ Welding Pandi and Kumar belong to N.S. Nagar, Abirami Nagar. The deceased in this case is one Buvaneshwari. She was studying in 11th standard in Anguvilas Higher Secondary School. The appellant was said to have had one side love for her. On 17.12.2010, the first accused/appellant spoke to the mother of the deceased and demanded that Buvaneshwari should be given in marriage to him. On the occurrence date at about 07.30 p.m., when Buvaneshwari was in her house, the accused is said to have threatened her that she must not marry anybody else. Unable to bear the threats held out by the accused, Buvaneshwari decided to commit self immolation. She was



admitted in the Government Hospital, Dindigul. She succumbed to the injuries on 25.12.2010 at about 08.10 p.m.

3.In this regard, P.W.1, the mother of the deceased lodged Ex.P.1/complaint on 23.12.2010 before Taluk Police Station, Dindigul. Ex.P.5/FIR in Crime No.1139 of 2010 was registered for the offences under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and Section 506(ii) of I.P.C. Following the death of Bhuvaneshwari, Ex.P.7, alteration report was submitted. Investigation was undertaken and final report came to be filed against both the accused for the offences under Sections 306 and 506 (ii) r/w 109 of I.P.C before the learned Judicial Magistrate No.I, Dindigul. Cognizance of the offences was taken and the case was committed to Sessions Court vide P.R.C.No.11 of 2011. The case was made over to the learned Mahila Court, Fast Track Court, Dindigul in S.C.No.44 of 2012. Charges were framed against both the accused. They pleaded not guilty and claimed to be tried.

4.The prosecution examined as many as 16 witnesses. Exs.1 to 9 were marked. On the side of the accused no evidence was adduced.

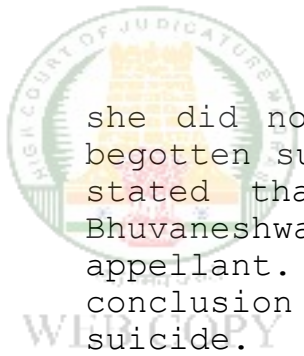
5.The learned Trial Judge by the impugned judgment acquitted the second accused but convicted the first accused/appellant for the offence under Section 306 of I.P.C. and sentenced him to undergo five years rigorous imprisonment and a fine of Rs.1,000/- was also levied. Questioning the same, this criminal appeal has been filed.

6.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to acquit the appellant in toto.

7.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment does not warrant any interference and wanted this Court to dismiss the appeal.

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

9.In this case, the occurrence took place on 17.12.2010 at about 07.30 p.m. However, Bhuvaneshwari died on 25.12.2010 at about 08.10 p.m. During the intervening period, her dying declaration was recorded by the learned Judicial Magistrate No.III, Dindigul on 17.12.2010 at 11.10 p.m. itself. The Doctor has certified that Bhuvaneshwar was in a proper state of mind and fit to give dying declaration. I carefully went through the entire dying declaration. The learned Judicial Magistrate No.III, Dindigul, had put a number of questions to the victim to ascertain if she was oriented and in a conscious state of mind. When the learned Judicial Magistrate asked Bhuvaneshwari as to how the burn injury occurred, she stated that she set fire to herself. She further stated that Pandi mistook her for another person. Bhuvaneshwari stated that



she did not love the other person. Pandi stated that for having begotten such a daughter, the mother could rather die. She further stated that this need not be informed to the outside world. Bhuvaneshwari had not said anything else or more against the appellant. From the dying declaration, one cannot come to the conclusion that the appellant wanted Bhuvaneshwari to die or commit suicide.

10. The Honourable Supreme Court in the decision reported in [**AIR 2019 SC 478, (Rajesh Vs. State of Haryana)**], 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:

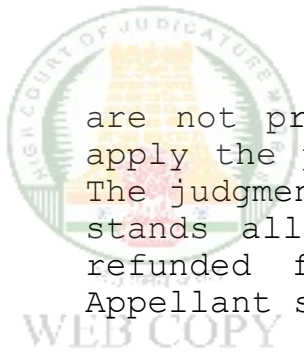
'16. Speaking for the three-Judge Bench in *Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088]*, R.C.

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 (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 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).''

11. Applying the principles laid down by the Honourable Supreme Court, one can easily come to the conclusion that the elementary ingredients of the offence under Section 306 of I.P.C.



are not present in this case. The Court below did not correctly apply the principles governing Section 306 of I.P.C. in this case. The judgment of the Court below is set aside and the criminal appeal stands allowed. The fine amount, if any paid by him shall be refunded forthwith. The bail bond, if any, executed by the Appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ias

To:

- 1.The Judge, Magalir Neethimandram,
Fast Track Mahila Court,
Dindigul.
- 2.The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.VENKATESWARAN, Advocate (SR-81635[F] dated 14/08/2019

Crl.A. (MD)No.330 of 2013

14.08.2019

JMN(28.02.2020) 5P : 7C