



Bail Slip

The Appellant/Accused viz. P.Narayanasamy, was released on bail granted order dated 25.11.2013 made in MP(MD)No.2/2013 in Crl.A (MD)No.333 of 2013.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.333 of 2013

P.Narayanasamy

... Appellant/Accused

Vs

The State,

Represented by the Deputy Superintendent of Police,

Virudhunagar Sub Division,

West Police Station,

in Cr.No.826 of 2011

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records of the order of sentence and conviction imposed by the Assistant Sessions Judge, Virudhunagar in S.C.No.149 of 2012, dated 26.06.2013 and set aside the same by allowing this criminal appeal.

For Appellant : Mr.A.Haja Mohideen

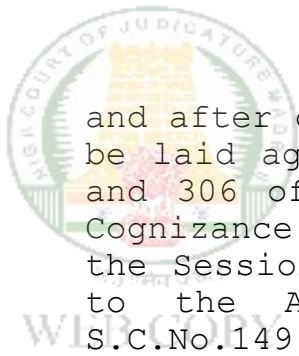
For Respondent : Mr.A.Robinson

Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offences under Sections 498A and 306 of IPC and sentenced to three years rigorous imprisonment and seven years rigorous imprisonment respectively and also levied with fine, vide Judgment dated 26.06.2013 in S.C.No.149 of 2012 on the file of the Assistant Sessions Judge, Virudhunagar.

2.The prosecution case is that the appellant got married to Muthuselvi in the year 2006 and two children were born through the wedlock. The appellant got addicted to the habit of drinking. He was not supporting the family financially. On the other hand, he used to come home drunk and pick up quarrel with his wife and also beat her. Unable to bear the persistent harassment at the hands of the appellant, Muthuselvi committed suicide in her matrimonial home at 10.10.2011 at about 07.00 a.m. In this regard, P.W.1-father of the deceased Muthuselvi lodged Ex.P1 complaint before the Virudhunagar East Police Station. Crime No.826 of 2011 (Ex.P4) was registered under Section 174 of Cr.P.C. Investigation was taken up



and after completing all the usual formalities, final report came to be laid against the appellant for the offences under Sections 498A and 306 of IPC before the Judicial Magistrate No.1, Virudhunagar. Cognizance of the offence was taken and the case was committed to the Sessions Court in P.R.C.No.12 of 2012. The case was made over to the Assistant Sessions Judge, Virudhunagar for trial in S.C.No.149 of 2012. Charges under both these provisions were framed against the appellant. He pleaded not guilty to the charges and claimed to be tried. The prosecution examined 13 witnesses and marked Ex.P1 to Ex.P8. On the side of the accused, two witnesses were examined as D.W.1 and D.W.2. The learned trial Judge, after a detailed consideration of the evidence on record, by the impugned Judgment, convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal came to be filed.

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

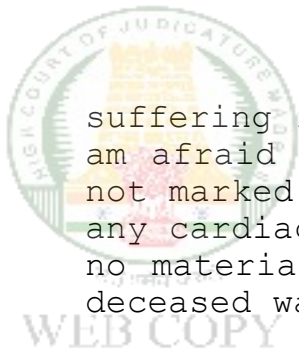
4. Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment is a well considered one and does not warrant any interference.

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

6.The prosecution examined the parents of the deceased as P.W.1 and P.W.2 and the brother of the deceased as P.W.3. These three witnesses have categorically spoken that the appellant used to come home drunk and pick up quarrel with Muthuselvi and also beat her. They also deposed that the deceased did not give any financial assistance for running the family. The deceased was taking care of the basic needs of the family by doing tailoring work. Even though these three witnesses were examined at length, their testimonies could not be shaken.

7.The learned counsel appearing for the appellant pointed out that the deceased and the appellant lived together throughout and that, at no point of time, the deceased went to her parent's house. That may be true. But then, that only shows the commitment of the deceased. It is admitted that two children were born through the wedlock. The deceased had patiently suffered all the harassment. Therefore, merely because, the deceased did not go back to her parents house, would not by itself absolve the appellant of his guilt.

8.It is not in dispute that the deceased committed suicide by hanging herself. The appellant did not come out with any defence version, while being examined under Section 313 of Cr.P.C. Only in



suffering from chest pain and that led to her to commit suicide. I am afraid that it is too far-fetched a theory. The appellant had not marked any document to show that the deceased took treatment for any cardiac ailment. Except putting a formal and feeble suggestion, no material has been placed before the Court to establish that the deceased was suffering from any heart problem.

9.The learned counsel appearing for the appellant is of-course right in his contention that the evidence on record does not anywhere establish that the appellant abetted commission of suicide by his wife Muthuselvi. A recent decision of the Honourable Supreme Court in **Crl.A.No.93 of 2019 (Rajesh Vs. State of Haryana)**, holds 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)*² 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.''

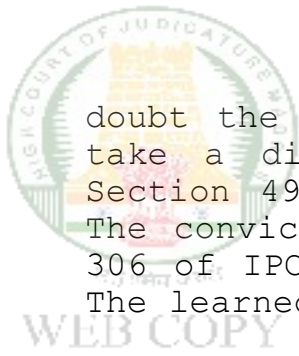
10. Applying the principles laid down by the Hon'ble Supreme Court, I have to necessarily come to the conclusion that the elementary ingredients of Section 306 are wholly absent in this case. There is no evidence indicating that the appellant wanted his wife Muthuselvi to die. Therefore, the Court below erred in convicting the appellant for the offence under Section 306 of IPC. The conviction and sentence imposed on the appellant under Section 306 of IPC is set aside and the appellant is acquitted of the



11. However, the evidence on record is more than sufficient to sustain the conviction of the appellant for the offence under Section 498A of IPC. It is true that P.W.4-Swathi, who was a neighbour as well as P.W.8 Prabu turned hostile. But in the very nature of things, the best persons to speak about what happened between the couple will be the family members. The fact remains that Muthuselvi consciously took her own life, even though she had two young children. It can only mean that she was driven to that extent. She was unable to bear the pain. Of-course, the appellant could have let in evidence to point out as to what led Muthuselvi to commit suicide. From the side of the appellant, no such evidence is forthcoming. As already pointed out, he only suggested to the prosecution witnesses that since Muthulakshmi was suffering from chest pain, she committed suicide. If that be so, the appellant ought to have taken his wife for treatment. In India, we have Government Hospitals, where, the treatment is given free. No such evidence has been placed before this Court. This Court will have to necessarily disbelieve and reject the said suggestion made by the accused.

12.The parents as well as the brother of the deceased have categorically deposed that the appellant became addicted to the habit of drinking. When the father of the accused was alive and they were in a joint family, all the things were under control. Following the demise of his father, there was no check on the conduct of the appellant. Coming home drunk and picking up quarrel with his wife and not extending any financial support for running the family and occasionally beating his wife that would certainly amount to cruelty within the meaning of Section 498A of IPC. It is true that as pointed out by the appellant's counsel, RDO-P.W.12 who conducted the inquest, had stated that the death of Muthulakshmi took place within seven years. The appellant had not been charged under Section 304(B) of IPC. It only means that the prosecution case was not that the appellant demanded dowry. Therefore, this will not in any way advance the case of the accused.

13.The Court below, after a detailed consideration of the evidence on record, came to the conclusion that the appellant was guilty of the offence under Section 498A of IPC. I carefully re-appreciated the evidence and I am satisfied that the testimony of P.W.1 to P.W.3 taken together would certainly lead one to the conclusion that the prosecution had established beyond reasonable



doubt the charge under Section 498A of IPC. I find no reason to take a different view. The conviction of the appellant under Section 498(A) of IPC as well as the sentence is also confirmed. The conviction and sentence imposed on the appellant under Section 306 of IPC is set aside. This criminal appeal is partly allowed. The learned trial Magistrate shall take steps to enforce this order.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Assistant Sessions Judge, Virudhunagar.
2. -Do- Thro The Principal Sessions Judge,
Virudhunagar
3. The Judicial Magistrate No.I,
Virudhunagar
- 4.The Deputy Superintendent of Police,
Virudhunagar Sub Division,
West Police Station,
Virudhunagar District
5. The Superintendent,
Central Prison, Madurai
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

Copy to:

The Section Officer,
Criminal Section/REcords,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.A.HAJA MOHIDEEN, Advocate (SR-82271[F] dated 19/08/2019)

Crl.A(MD)No.333 of 2013
19.08.2019

MK (27.05.2020) 6P 10C

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