



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.300 of 2019

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Balasubramanian

... Revision Petitioner/ PW 1

Vs.

1.State through
The Inspector of Police,
Theppakulam Police Station (L & O),
Madurai.

2.Ganesh

3.Vandu @ Murugeswari

4.Perumal

5.Pazhaniammal

... Respondents/Respondents

Prayer: Criminal Appeal is filed under Section 372 of Cr.P.C, to call for the records in S.C.No.157 of 2010, on the file of the Fast Track Court No.I, Madurai, judgment dated 20.08.2011 and set aside the acquittal order and allow this revision.

For Appellant : No appearance

For Respondents : Mr.A.Robinson

Govt. Advocate (Crl. Side) for R1

JUDGMENT

This appeal is directed against the judgment of acquittal dated 20.08.2011, made in S.C.No.157 of 2010, on the file of the Fast Track Court No.I, Maduari.

2.The case of the prosecution is that one Velayudham consumed poison and died on 22.03.2007 at about 10.30 p.m. at Railway station road, Keelmadurai. His brother namely., Balasubramanian, who is the appellant herein lodged a complainant/Ex.P.1 on 23.03.2007 before Theppakulam Police Station in Crime No.270 of 2007. Ex.P.6/FIR was registered. Investigation was undertaken and final report was filed before the learned Judicial Magistrate, Madurai in P.R.C.No.65 of 2007. It was later made over to the learned Sessions Court/Fast Track Court No.I, Maduari in S.C.No.157 of 2010. Cognizance of the under Sections 306 of I.P.C. was taken. Respondents 2 to 5 herein were shown as accused. The accused pleaded not guilty to the charges and claimed to be tried.



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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 (Cr1.) 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



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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.''

9. In this case, the learned Trial Judge had rightly acquitted the accused. The foundation of the prosecution case is Ex.P.2. When its genuineness and authenticity is open to doubt, the case of the prosecution stands seriously undermined. This is an appeal against an acquittal. The view taken by the Court below cannot be said to be incorrect or perverse. In this view of the matter, I find no ground to interfere and the criminal appeal stands dismissed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1. The Fast Track Court No.I,
Madurai.

2. The Inspector of Police,
Theppakulam Police Station (L & O),
Madurai.

3. The 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)

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