

**BAIL SLIP**

The Appellant/Accused namely Rejasekar S/o Veeraiyan was directed to be released on bail on per order of this court dated 30.04.2014 in MP(MD)No.1 of 2014 in Cr1.A (MD)No.137 of 2014 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Cr1.A(MD)No.137 of 2014

Rajasekar ... Appellant / Accused

Vs.

State rep by
The Inspector of Police,
Cantonment Police Station,
Trichy.

In Cr.No.167 of 2013 ... Respondent / Complainant

PRAYER: Petition is filed under Section 374(ii) of Criminal Procedure Code, against the Judgment and Conviction passed by the learned III Additional District and Sessions Judge, Trichy in S.C.No.200/2013, dated 04.04.2014.

For Appellant : Mr.B.Jameel Arasu

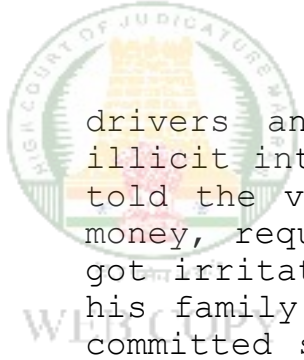
For Respondent : Mr.K.Suyambulinga Bharathi
Govt.Advocate (crl.side)

O R D E R

This Criminal Appeal is filed by the appellant / accused, against the Judgment and conviction passed by the learned III Additional District and Sessions Judge, Trichy in S.C.No.200 of 2013, dated 04.04.2014, convicting the appellant under Section 306 IPC., and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo one year Rigorous Imprisonment.

2. The facts of the case are briefly stated hereunder:-

The defacto complainant's wife Vani resided at No.267, Kallukuzhi, Railway Colony and was doing the work of preparing food for the Railway employees. For the past several years she had been away from her husband / P.W.1, and has been a cook for the Railway



drivers and she stayed at Kallukuzhi Railway Colony. She had illicit intimacy with the accused. On 24.02.2013, while the accused told the victim that he was to go to Coimbatore, the victim asked money, requested him to stay at Tiruchirappalli itself, the accused got irritated, told the deceased, if she dies only, he can be with his family. On hearing this, the deceased, having got frustrated, committed suicide, by hanging herself in the bathroom of the house of the accused, thereby, the accused caused death of the deceased.

3. On receipt of final report by the prosecution, the learned Judicial Magistrate No.II, Tiruchirappalli, taken the case on file as PRC.No.49 of 2013, under Section 306 of IPC.

4. Since the offence committed by the accused under Section 306 IPC., is triable by the Court of Sessions, the learned Judicial Magistrate No.II, Tiruchirappalli, has committed the case along with the entire records to the Principal District and Sessions Court, Tiruchirappalli, which was taken on file as S.C.No.200 of 2013.

5. In order to prove the case of the prosecution, on the side of the prosecution as many as 12 witnesses were examined as P.Ws.1 to 12 and 13 documents were marked as Exs.P1 to P13 and M.Os.1 to 3 were marked. On the side of the accused, no witness was examined nor any document was marked.

6. When the appellant was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same.

7. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid and challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellant.

8. Mr.B.Jameel Arasu, the learned counsel appearing for the appellant would submit that the Court below failed to consider the fact that P.W.1 has categorically stated that he has not given any complaint to the Police and at the instance of Police Officers, he signed in the complaint. P.W.1 does not know to read and write Tamil. The prosecution has not established any instigation said to have caused by the accused in order to attract offence under Section 306 IPC. The Court below has mainly relied upon the evidence of P.W.2 and P.W.4. They are interested witnesses, that too, P.W.4 is minor, aged about 8 years at the time of occurrence, was tutored, giving contradictory version and he is not a competent witness to speak about the occurrence. He would further submit that there is no iota of evidence on record regarding the abetment to commit suicide and that in the absence of any cogent evidence on record for the offence under Section 306 IPC., the Judgment of conviction and sentence passed by the trial Court in holding the appellant/accused guilty cannot be sustained. Hence, the learned counsel prayed to set aside the Judgment of Conviction and sentence passed by the trial Court.



9. The learned counsel, in support of his contention, relied on a Judgment of Hon'ble Apex Court in **Swamy Prahaladdas Vs. State of M.P. and Another** reported in **(1995 SCC (Cri) 943)** and would contend that the words, which were uttered by the appellant, are casual in nature, which are often employed in the heat of the moment between quarrelling people and therefore, it cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant.

10. The learned counsel, drew the attention of this Court to a Judgment of Hon'ble Apex Court in **Sonti Rama Krishna Vs. Sonti Shanti Sree and Another** reported in **(AIR 2009 SC 923)** and would submit that to constitute the abatement, it should be established by means of acceptable evidence by the prosecution that the accused had the animus to drive the woman to commit suicide. Mere uttering of words 'go and die' itself will not constitute such abetment.

11. The learned counsel, invited the attention of this Court to an unreported decision of this Court in **S.A.Margaret Angel Vs. State Rep.by The Inspector** made in **Cr1.O.P(MD)No.15407 of 2017**, dated 05.10.2018, wherein it has been held as follows:-

"19. In the second case, referring the above decision, when the case was dealt with under Section 306 r/w 107 Ipc, the Apex Court held that the words uttered in a quarrel or on the spur of the moment such as 'to go and die' cannot be taken to be uttered with mens rea and therefore, the person so said cannot be convicted under Section 306 IPC. If the accused had the motive or intention that his wife should die committing suicide on her own, then there must be some instance bringing to surface the mens rea, which is essential as held by the Apex Court. No instance brought to the notice of the Court how the accused entertained mens rea or how and why he should think that his wife should commit suicide for which he should have abetted. If really he had the intention that his wife should die and in that process with mens rea if he had scolded her, ordinarily he would not have gone to the rescue of the wife by putting off the fire, then taking to the hospital as observed by the Apex court and in the normal course, he would have left the house itself, allowing the wife to die, which is not the case admittedly here. Therefore, the mens rea is also absent and this being the position, the conviction appears to be incorrect.

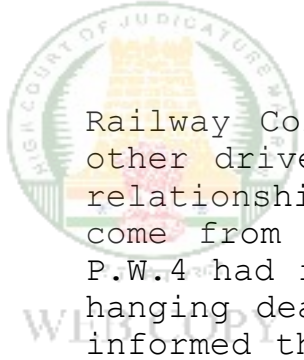


when the offence under Section 306 Ipc was challenged, for quashing, when the suicide is not the direct result of the words uttered by the accused, no person could be called to face the trial under Section 306 IPC. In the case involved in the above decision, it seems the accused therein scolded the deceased or remarked 'to go and die'. Thereafter the deceased went home in a dejected mood committed suicide, which was sought to be brought under Section 306 IPC. Considering the above facts and circumstances of the case, the Apex Court held mere uttering the words 'go and die' is not sufficient to bring the offence under Section 306 IPC.

21. In ***State of Gujarat v. Sunilkumar Kanaiyalal Jain (1997 Crl.L.J.2014)*** a Division Bench of the Gujarat High Court considering the scope of Section 306 IPC elaborately dealt with abetment, realising the responsibility of the Court also has observed, 'better die today than tomorrow? if had been uttered cannot be said to be the abetment in the eye of law since the words might have been uttered due to outburst of one's own fatuity or anger or consternation without any intention or knowledge or might be the rude or insulting, not with desire to instigate the person to commit suicide, which principle also could be extended to the above case on hand. By applying the law settled by the Supreme Court to the facts of the case on hand, as well as analysing the evidence available on record and taking into consideration the over all circumstances of the case also after deep consideration, I am of the considered opinion, no offence has been made out under Section 306 IPC.'

12. Per contra, Mr.K.Suyambulinga Bharathi, the learned Government Advocate (crl.side) appearing for the prosecution would submit that in this case, P.Ws.1 to 12 have been examined; Exs.P1 to P13 were marked and M.Os.1 to 3 were marked. P.W.1 is the husband of the deceased; P.W.2 is the co-occupant of the appellant; P.W.3 is the brother of the deceased; P.W.4 is the son of the deceased; P.W.5 not supported the case of the prosecution; P.W.6 is the VAO, before whom, confession and recovery have been made; P.W.8 is the Scientific Officer of the Forensic Department; P.W.10 is the Postmortem Doctor; P.W.11 is the Sub-Inspector of Police, who received the complaint, registered, initiated investigation, thereafter taken over file; P.W.12 / Investigating Officer, who has filed charge sheet in this case.

13. P.W.3, brother of the deceased, states about the deceased along with P.W.4 / her son were residing with the appellant at



Railway Colony and there, she used to cook for the appellant and other driver viz., P.W.2 and others. She was also having live-in relationship with the appellant. On 24.02.2013, P.Ws.1 and 3 had come from Sengulam to the Railway Colony, where on seeing P.W.1, P.W.4 had rushed towards them, cried and informed about her mother hanging dead. Thereafter, P.Ws.1 and 3 brought down the body and informed the Police about the same. P.W.2 / co-occupant along with the appellant had stated about the quarrel between the appellant and the deceased on 24.02.2013, at about 4.00 p.m., and thereafter, he pacified and separated them, brought the appellant to the front of house and after going out and after having Tea, when he came back, the bathroom door was locked from inside and through the window, he saw the deceased hanging, she committing suicide by hanging, broke opened the lock, and thereafter, informed the Police. He had given money to P.W.4 to inform his family members. P.W.8 / Scientific Officer of Forensic Science Department had stated that no poisonous substance found in the viscera of the body. P.W.10 / Postmortem Doctor, on conclusion of autopsy, opined that the deceased died asphyxia due to hanging.

14. P.W.11 had received the complaint, visited the scene of occurrence, arrested the accused, prepared observation mahazar, conducted inquest, examined the witnesses, P.W.12 took up investigation, sent the body for postmortem, after obtaining viscera report and postmortem report, filed the charge sheet.

15. The Court below, on analysing of the materials had rightly convicted the appellant, which need not be interfered with.

16. I have heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

17. P.W.1, the husband of the deceased, admits that for the past six years, the deceased was living with the appellant, as husband and wife. P.W.4 is the son, who was also living with them. The deceased was cooking for the lorry drivers, who used to visit there. P.W.1 had denied about the contents in the complaint / Ex.P7. He categorically states that he does not know to read or write Tamil and only admits his signature, which is marked as Ex.P1. The complaint has been marked as Ex.P7, through the Sub-Inspector of Police / P.W.11. P.W.3, the brother of the deceased, who had come along with P.W.1 states about his sister hanging through the window and he gives a contradictory version that in the hands of the deceased, food articles was found depicting that she had not even washed her hands after taking meals and some more food articles were found on her mouth. This aspect has not been stated by any of the witnesses viz., P.Ws.1, 2, and 4. Likewise, during inquest, no one had mentioned about the same, as also the Postmortem Doctor. The presence of P.W.2 is highly doubtful.



18. Further, P.Ws.1 and 2 state that they came to know about the happenings only through P.W.4. P.W.2 is the co-occupant of the house, he states about the quarrel between the appellant and the deceased, at about 4.00 p.m., and thereafter, he separates them and goes out for tea, when he came back, he finds bath room door locked inside and through window he saw the deceased hanging thereafter, he broke opened the door. P.Ws.1 and 2 had come there, brought down the body, informed the Police. P.W.4 was asked to inform his family members by P.W.2. Other than this, there is nothing incriminating against the appellant. P.W.4 was a minor, aged about 8 years, gives a contra version, as though he had witnessed his mother being done to death by the appellant, appellant drawing the saree around her neck and thereafter, the body was made to be shown as hanging by the appellant. This version of P.W.4 is completely contra to the version of the case of the prosecution. From the observation mahazar, it is seen that bath room door was locked from inside and P.Ws.1 to 3 state the same. The lock was broke opened, thereafter, they entered into the bathroom and brought down the body. Further, the bathroom window was on a elevated position and it would not have been possible for P.W.4 to see the happenings inside the bathroom. Taking tender age of P.W.4, he had been tutored and he is uttering falsehood and it has been suggested that to extract money, P.W.4 was made to say so. P.W.11 / Investigating Officer admits the contradiction of P.W.4 statement. P.W.4 statement is not corroborated by any of the witnesses. Thus, the evidence of P.W.4 is highly doubtful and it is not safe to place reliance.

19. The mahazar witnesses have not supported the case of the prosecution and Forensic Report is that there was no poisonous substance found in the viscera of the body. P.W.11 / Sub-Inspector of Police, had conducted initial investigation admits about the contradiction of witnesses. The evidence available are not trustworthy, does not inspire confidence to place reliance and act upon. There are no sufficient materials to suggest to infer that the appellant is the reason for cause of death. Hence, the prosecution has miserably failed to prove the case against the appellant beyond reasonable doubt.

20. The reason given by the trial Court and placing reliance on evidence of P.Ws.1 to 4 are not sustainable, the evidence of P.Ws.1 to 4 are contrary to each other, unbelievable and it is unsafe to place reliance on them.

21. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant / Accused in S.C.No.200/2013, by the learned III Additional District and Sessions Judge, Trichy, dated 04.04.2013, is set aside and the appellant is acquitted of the charges framed against him. The bail



bond, if any, executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar (CS)

MPK

To

- 1.The III Additional District and Sessions Judge,
Trichy.
- 2.do Through the Principal District and Sessions Judge, Trichy.
- 3.The Judicial Magistrate No.II , Trichy.
- 4.The Superintendent Central Prison, Trichy.
5. The Inspector of Police,
Cantonment Police Station,
Trichy.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Record Clerk, (2 copies)
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.B.JAMEEL ARASU, Advocate (SR-106356[F] dated 20/12/2019)

Judgment made in
Cr1.A(MD)No.137 of 2014
20.12.2019

VB(07.01.2020) 7P 10C