



Bail Slip

The Appellant / Sole Accused namely Petchiraja @ Petchiraj S/o.Petchiyappan was released on bail by this Hon'ble Court made in MP.No.2/14 in Crl.A(MD)No.18 of 2014 dated 10.01.2014.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :26.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.18 of 2014

Petchiraja @ Petchiraj ... Appellant / Sole Accused
Vs.

State represented by
the Inspector of Police,
Sivagiri Police Station,
Tirunelveli District,
Crime No.12 of 2010]

... Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the judgment in S.C.No.235 of 2011 dated 22.8.2013 on the file of the learned Sessions Judge, Mahalir Neethimantram, Tirunelveli District and set aside the same.

For Appellant : Mr.S.Duraiaraj

For Respondent : Mrs.S.Bharathi,

Government Advocate (crl side)

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellant by the trial Court, namely, the learned Sessions Judge, Mahalir Neethimantram, Tirunelveli, Tirunelveli District in S.C.No.235 of 2011, by order dated 22.08.2013.

2.The appellant is the sole accused and he was charged for the offence under Sections 376, 417 and 307 IPC. The trial Court by order dated 22.08.2013 convicted and sentence the appellant to undergo seven years of rigorous imprisonment and to pay a fine of Rs.10,000/-, in default of payment of the fine amount, one year rigorous imprisonment was also ordered and he was acquitted from the charges under Sections 417 and 376 IPC.

3.The prosecution case in a nutshell is as follows:

3.1.The accused and the deceased Alagammal were residents of Keelakaraisalkulam, Tirunelveli District. At the time of occurrence the accused was a married man and was having two children and the deceased was a unmarried girl. The accused falsely promised the deceased that he would marry her and on that false promise the deceased went with him to a sugarcane field on 17.01.2010 and they



had sexual intercourse. The deceased returned home only on 18.01.2010 at 7.00 am and when she was enquired by her parents, she revealed her relationship with the accused to them and they scolded her and they did not permit her into the house. Therefore, the deceased went to the accused house and insisted the accused to marry her. But the accused refused to marry her stating that he already got married and having two children and advised her either to go to her parents or go and die. Provoked by the words uttered by the accused, the deceased went to the PW.2's land and fell down in a well situated therein. The father of the deceased one Gurusamy, lodged a complaint before the Sivagiri Police Station on 18.01.2010 at about 8.00pm. The Sub Inspector of Police [PW7] of the Sivagiri Police Station, recorded the complaint Ex.P1 in Crime No.12 of 2010 under Sections 366 and 306 IPC.

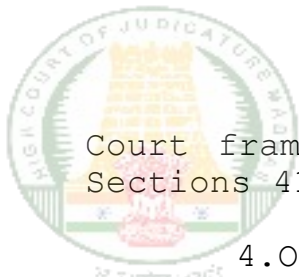
3.2.The printed copy of the First Information Report is marked as Ex.P6 and it was sent to the concerned Judicial Magistrate on 19.01.2010 at about 5pm.

3.4.On receipt of the information, the Inspector of Police, Sivagiri Police Station one Mr.Charles Kalaimani [PW8] went to the place of occurrence and prepared the observation mahazar [ExP6] and rough sketch [ExP8] in the presence of Veeraya [PW5] and another. Thereafter with the help of fire service personnel, the body was rescued from the well. PW8 conducted the inquest in the presence of Panchayatars and the inquest report is marked as Ex.P8 and thereafter, he made a request to the Sivagiri Government Hospital for conducting postmortem.

3.5.Dr.Chinnathai [PW6] at Sivagiri Government Hospital, received the dead body on 19.01.2010 at 9.30am and conducted autopsy at 10.45am. She collected the intestines and its contents, liver and kidney and sent the same for chemical analysis. Though vaginal spermatozoa was collected, it was not sent for chemical analysis. After the chemical analysis report, the Doctor [PW6] gave her final opinion that the deceased died due to drowning 12 to 24 hours prior to the autopsy.

3.6.The Inspector of Police [PW8] arrested the accused on 21.01.2010 at about 10.30am at Rayagiri Bus stop and sent him for medical examination for subjecting him to potent test. The Doctor PW.9, who conducted the potency test has certified that the accused is potent and thereafter, the further investigation was taken over by PW11 on 26.01.2010 and he examined the Doctors PW6 and PW9. Since, PW11 was also transferred, the further investigation in this case was carried out by PW12 on 27.07.2010. After obtaining the necessary opinion from the Additional Public Prosecutor, he filed the final report under Section 417 and 306 IPC.

3.7. With the available materials placed on record, the trial



Court framed charges against this appellant for the offence under Sections 417, 376 and 306 IPC.

4. On the side of the prosecution 12 witnesses were examined and 9 documents were marked and no material object is marked.

5. The available prosecution evidence are as follows:

5.1. PW1 is the victim girl's father, who lodged the complaint and he speaks about missing of her daughter from 17.01.2010 to 18.01.2010 and thereafter lodged a complaint.

5.2. PW2 one Shanmugavel, from whose well the deceased was recovered, is also an attester to the complaint ExP1.

5.3. PW3 one Balu alias Balasubramaniam, is a relative of PW1 and in whose sugarcane field, the deceased and the accused stayed on the previous night on 17.01.2010 to 18.01.2010 morning.

5.4. PW4 one Esakkimuthu is the brother of the deceased, who speaks about the missing of his sister from 17.01.2010 and his father scolding her sister when she returned home on 18.01.2010 in the morning.

5.5. PW5 is the witness to the observation mahazar.

5.6. PW6 is the Doctor, who conducted postmortem.

5.7. PW7 is the Sub Inspector of Police, who registered FIR.

5.8. PW8 is the Investigation Officer, who conducted preliminary investigation in this case.

5.9. PW9 is the Doctor, who conducted potentiality test for the accused.

5.6. PW10 is the constable, who identified the dead body to the Doctor PW6.

5.7. PW11 is the subsequent investigating officer, who conducted a portion of investigation in this case.

5.8. PW12 is the Inspector of Police, continued the investigation and filed a final report in this case.

6. In conclusion of the trial, the trial Court found the appellant guilty for the offence under Section 306 IPC and further convicted and sentenced him as stated supra and acquitted him from the charges under Sections 376 and 417 IPC.



7. Heard Mr.S.Durairaj, learned Counsel for the appellant and Mrs.S.Bharathi, learned Government Advocate (Crl Side) appearing for the State.

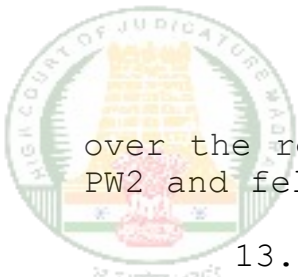
8. The learned Counsel for the appellant submitted that there is no evidence available in this case to attract the offence under Section 306 IPC and therefore, the conviction and sentence imposed under Section 306 IPC is illegal and not sustainable.

9. The learned Counsel for the appellant has also pointed out that there is an inordinate delay in reporting the incident to the police and the First Information Report reaching the Court and the trial Court has erred in disbelieving the evidence of PW1 and PW2 as they are interested witness in this case and therefore, prayed for allowing this criminal appeal.

10. Per contra, the learned Government Advocate (Crl Side) would submit that the prosecution has established the case beyond any reasonable doubt. Though the trial Court has acquitted the accused for the offence under Section 376 IPC and 417 IPC, has rightly convicted the accused for the commission of offence under Section 306 IPC. The accused knowing well that he would not marry the victim, taken her to the lonely place, induced her to stay along with him for the whole night and also had intercourse with her, making her to believe that he would marry her and after this incident was known to PW1, he scolded the deceased and did not permit her into the house and when she approached the appellant, he asked the victim to go and die, which resulted the deceased in committing suicide and therefore, the accused had deliberately instigated the victim girl to commit suicide, on account of which, the victim girl committed suicide and hence, she prays for dismissal of this appeal.

11. This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed on record.

12. The victim girl in this case was aged about 20 years at the time of occurrence. According to the prosecution, the victim girl on her own volition went along with the accused and stayed along with the accused overnight on 17.01.2010 in a sugarcane field of PW3 and returned home on the next day morning, i.e., on 18.01.2010 at 8.00am. When she was enquired by her parents, she stated that she stayed along with the accused. Annoyed over the words uttered by the deceased, PW1 scolded her, did not permit her into the house and chased her out of house and thereafter, the deceased went to the house of the accused and accused has told her that he was a married man and also having two children and therefore, he was not in a position to marry her and however, he told her either to go to her parents house or go and die. Furiated



over the reply of the accused, the deceased went to the land of the PW2 and fell down in a well situated therein and committed suicide.

13.The complaint [Ex.P1] in this has been lodged on 18.01.2010 at about 8.00pm. But this complaint has reached the concerned Court only on 19.01.2010 at 5.00pm, nearly after 22 hours.

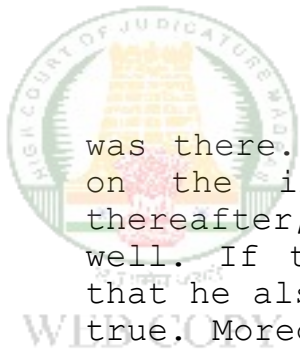
14.In the complaint PW1 has admitted that her daughter / deceased was found missing from 17.01.2010 6pm. However, she returned home only on 18.01.2010 at 8.00am. When she was enquired by PW1 about her missing for the whole night, the deceased admitted before him that he had illegal intimacy with the accused and her staying along with the accused in a sugarcane field belonging to PW3. PW1 got annoyed over the reply, scolded her and chased her out of the house and did not permit her into the house. The deceased having left with no other go, went to the accused house.

15.The accused and the deceased in this case are relatives. The deceased knew very well that the accused was a married man and also having two children. However, she developed intimacy with the accused and stayed along with him for the whole night on the previous day of the occurrence and though the charges were framed for the offence under Sections 376 and 417 IPC, the trial Court has rightly acquitted the appellant from the charges under Sections 376 and 417 IPC.

16.Insofar as the commission under Section 306 IPC is concerned, the only averment made against the accused is that the deceased went to the house of the accused on 18.01.2010 and requested him to marry her. However, the accused refused to marry her by stating that already he got married and having two children. He also suggested her either to go to her parents house or go and die. These words of the appellant, made the deceased to commit suicide.

17.For the offence took place in the accused's house on 18.10.2010, there is no evidence from the prosecution case. According to the complainant, the deceased returned home on 18.01.2010 at 8.00 am and he did not permit her inside the house and also chased her out of the house and also suggested her to go to the house of the accused.

18.Accordingly, the deceased also went to the accused house, wherein he replied that he cannot marry her and told her either to go to her parents house or go and die. Therefore, she committed suicide. In this case, the deceased is said to have committed suicide on 18.01.2010 at about 6.00pm. In the complaint, Ex.P1, PW1 states that he also went along with the deceased and has witnessed the words uttered by the accused and it is also his case that he also followed the deceased, but she could not be rescued as no one



was there. During the course of examination, PW1 states that it is on the information given by PW3, the Police came and only thereafter, he came to know that her daughter was found dead in the well. If that is so, the statements made in the complaint [ExP1] that he also accompanied her daughter to the accused house cannot be true. Moreover, according to PW1, he chased her daughter out of the house on 18.01.2010 at 8.am. The deceased fell down in the well and committed suicide on 18.01.2010 at 6.00pm and there is no evidence available with the prosecution as to the happening between 8.00am and 6.00pm on 18.01.2010. Apart from the evidence of PW1, there is no evidence collected from the neighbours of the accused house as to whether the accused has stated in such a manner, which has driven the deceased to commit suicide.

19.The fact remains that the PW1 also did not permit her daughter / deceased into the house and chased her out of the house. The accused also refused to marry her that already he got married and was having two children. Even, if the accused had uttered the words go and die, the same will not constitute an offence under section 306 IPC as per the dictum laid down by the Hon'ble Supreme Court in the below mentioned cases.

20.The Hon'ble Supreme Court, in its latest decision, in ***Rajesh v. State of Haryana***, reported in ***2019 SCC OnLine SC 44*** has held as follows:

"9. 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, reported in (2010) 1 SCC 707).

10. The term instigation under Section 107 IPC has been explained in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, reported in (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367, 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 "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" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See Oxford Advanced Learner's Dictionary, 7th Edn.)."

11. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. [See Praveen Pradhan v. State of Uttaranchal, reported in (2012) 9 SCC 734]"

21.The Hon'ble Supreme Court in **Sontui Rama Krishna v. Sonti Shanti Sree & another**, reported in **AIR 2009 SC 923**, has held 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.

22.Even this Court has taken a similar view, in its latest decision, in the case of **S.A.Margaret Angel and another v. State and another**, in Crl.O.P.(MD)No.15407 of 2016 decided on 05.10.2018.

23.The words like 'go and die', 'better die today than tomorrow' are uttered during quarrels. Such words cannot be given literal meaning so as to say that the accused had abetted the commission of suicide. 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 such words, by itself will not constitute such abetment. The words uttered due to outburst of one's own fatuity or anger or consternation without any intention or knowledge will not constitute an offence.

24.In this case there is no evidence whether the accused has uttered such words on the date of occurrence, which has driven her to commit suicide. In the absence of any such materials it may not



be safe to convict the appellant and therefore, this Court is of the view that the conviction and sentenced imposed by the trial Court under Section 306 IPC is liable to be set aside.

25.In the result,

■ this Criminal Appeal is allowed;

■ the conviction and sentence imposed on the appellant in S.C.No.235 of 2011 on the file of the learned Sessions Judge, Mahalir Neethimantram, Tirunelveli District are set aside and the bail bonds executed by the appellant shall stand terminated;

■ Fine amount, if any paid, shall be refunded to him.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

DSK

To

1. THE SESSIONS JUDGE, MAHALIR NEETHI MANDRAM, TIRUNELVELI
2. THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI
3. THE JUDICIAL MAGISTRATE, SIVAGIRI, TIRUNELVELI DIST
4. THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI
5. THE INSPECTOR OF POLICE, SIVAGIRI POLICE STATION, TIRUNELVELI DIST, CR.NO.12/2010
6. THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.DURAI RAJ, Advocate (SR-89792[F] dated 26/09/2019)

Crl.A(MD)No.18 of 2014

26.09.2019

SMA/29.01.2020/8P/8C