**Bail Slip**

The Appellant/Accused namely Murugan, S/o.Rasu, was released on bail by this Hon'ble Court made in MP(MD).No.1/2011 in Cr1.RC (MD).No.414/2011 dated 16.06.2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1. R.C.(MD)No.414 of 2011

Murugan

.. Petitioner/Appellant/  
Accused

Vs.

State rep. by,  
The Inspector of Police,  
Kariapatti Circle,  
Aviyoor Police Station,  
Virudhunagar District.  
(Crime No.22 of 2008)

.. Respondent/Respondent/  
Complainant

**Prayer :** This Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., to set aside the conviction and sentence imposed by the Court of the Additional District Judge(Fast Track Court), Virudhunagar in C.A.No.06 of 2011, dated 20.05.2011 in confirming the conviction and sentence imposed by the Assistant Sessions Court, Virudhunagar in S.C.No.31 of 2010 dated 07.02.2011 and allow this Criminal Revision petition.

For Petitioners : Mr.R.Pon Karthikeyan

For Respondent : Mrs.S.Bharathi,  
Government Advocate(Cr1. Side)**ORDER**

The petitioner was on friendly terms with the deceased Tamilselvi. It appears that both were in love. While so, the said Tamilselvi attempted suicide by self-immolation on 25.02.2008 at about 3.30 p.m. She was taken to hospital and she died on 26.02.2008 at about 5.05 a.m. In this regard, Crime No.22 of 2008 was registered on the file of Aviyoor police station. Investigation was undertaken and final report was filed. Cognizance was taken for the offence under Section 306 of I.P.C. The matter was ultimately committed to the Sessions Court in S.C.No.31 of 2010 and made over



to the learned Assistant Sessions Judge, Virudhunagar. The petitioner herein denied the charge framed against him and claimed to be tried. The prosecution examined 18 witnesses. Ex.P.1 to Ex.P.11 were marked. M.O.1 was also marked. The learned Judge, by Judgment dated 07.02.2011 found the petitioner guilty of the offence and sentenced him to undergo 5 years Rigorous Imprisonment and also levied with a fine of Rs.1,000/-, in default, he was sentenced to undergo three months Simple Imprisonment. The same was confirmed in C.A.No.6 of 2011 on the file of the learned Additional District Judge, (Fast Track Court), Virudhunagar, vide Judgment dated 20.05.2011. Challenging the same, this Criminal Revision has been filed.

2. The case of the prosecution is that the accused involving death of the very young girl who attempted suicide by self-immolation.

3. The learned Government Advocate would submit that the petitioner had caused death of the deceased Tamilselvi by suicide. The learned Government Advocate wanted this Court to sustain the Judgment of conviction and sentence imposed on the petitioner.

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

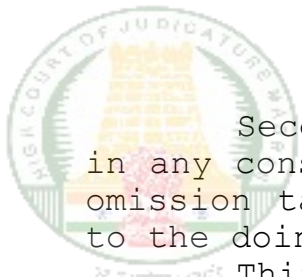
5. As rightly contended by the learned counsel appearing for the petitioner, the deceased Tamilselvi did not die immediately. She was examined by P.W.16 Judicial Magistrate who had taken the Dying Declaration. The Doctors had certified that she was in a fit condition to give the declaration. In fact the learned Judicial Magistrate had posed relevant questions to Tamilselvi and satisfied himself that she was in a position to give the Dying Declaration. Tamilselvi before her death had categorically stated that she decided to commit suicide because the Revision petitioner herein, namely, Murugan went back of his promise to marry her. In other words, the petitioner after promising to marry Tamilselvi, had ditched her. But then, this is by itself will not amount to abetment of offence of suicide to attract Section 306 of I.P.C. The learned counsel appearing for the Revision petitioner drew my attention to the decision of the Hon'ble Supreme Court reported in AIR (2019) SC 478(Rajesh V. State of Haryana). The Hon'ble Supreme Court in the aforesaid decision held as under:-

"7. It is necessary to refer to Section 306 I.P.C. and Section 107 I.P.C. 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 of I.P.C. 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 I.P.C, 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 I.P.C. (See Amalendu Pal alias Jhantu V. State of West Bengal( (2010) 1 SCC 707).

9. The term instigation under Section 107 I.P.C has been explained in Chitresh Kumar Chopra V. State (Govt. of NCT of Delhi( (2009) 16 SCC 605) as follows:

'16. Speaking for the three-Judge Bench in Ramesh Kumar case [ (2001) 9 SCC 618: 2002 SCC(Cri) 1088] : (AIR 2001 SC 3387), 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 "investigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" 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, 7<sup>th</sup> Edn.).



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(2012) 9 SCC 734)."

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6. In the case on hand also, obviously, the petitioner herein would not have intended the death of Tamilselvi. His relationship with Tamilselvi broke down and he wanted to abandon her. This is by itself will not amount to abetment of suicide. The Court below has to bear in mind the import of Section 306 of I.P.C. Therefore, the Judgments of the Courts below are set aside.

7. The Criminal Revision stands allowed, accordingly. The bail bond, if any, executed by him shall stand cancelled and fine amount, if any, paid by him, is to be repaid to him. No costs.

Sd/-

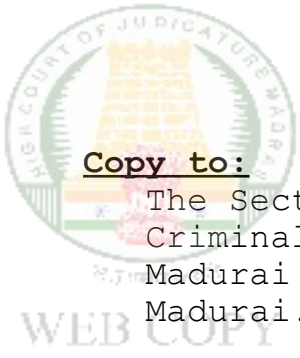
Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Additional District Judge(Fast Track Court),  
Virudhunagar.
2. The Assistant Sessions Judge,  
Virudhunagar.
- 3.The Principal Sessions Judge, Virudhunagar
- 4.The Judicial Magistrate No.II, Virudhunagar
- 5.The Chief Judicial Magistrate, Virudhunagar District  
at Srivilliputhur
- 6.The Superintendent, Central Prison, Madurai.
- 7.The Inspector of Police, Kariapatti Circle,  
Aviyoor Police Station, Virudhunagar District.
- 8.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.PON KARTHIKEYAN, Advocate ( SR-70610[F] dated  
21/06/2019 )

Crl. R.C. (MD) No.414 of 2011  
21.06.2019

pmu

JMN(18.09.2019) 5P : 12C