



Bail Slip

The Petitioner namely Nathiya, W/o.Saravanan, was released on bail as per the order of this Court dated 03.02.2011 made in MP (MD)No.1/2011 in Crl.R.C. (MD)No.83 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C. (MD)No.83 of 2011

Nathiya

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Athirampattinam Police Station,
Thanjavur District.
(Crime No.26 of 2009)

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records on the file of the learned Additional District and Sessions Judge (FTC-II), Pattukkottai in C.A.No.117 of 2010 by judgment dated 07.01.2011, confirming the conviction and sentence imposed by the learned Assistant Sessions Judge, Pattukkottai in S.C.No.283 of 2009 by the judgment dated 30.10.2010 and set aside the judgments of the Courts below and acquit the petitioner.

For Petitioner	: Mr.G.Karnan
For Respondent	: Mrs.S.Bharathi
	Government Advocate (Crl. Side)

O R D E R

The petitioner was shown as A2 in S.C.No.283 of 2009 on the file of the learned Assistant Sessions Judge, Pattukkottai. There were totally four accused. Charges were framed against them under Section 306 of I.P.C.

2.The deceased in this case namely., Elavarasi was the wife of one Ganesan who was none other than the younger brother of A1/Saravanan. Ganesan was employed abroad. The petitioner herein is said to have developed suspicion that the deceased/Elavarasi was having some kind of intimacy with her husband/Saravanan. This had given rise to quarrel between the petitioner and the deceased. The quarrel had reached a high point on 16.01.2009. In the meanwhile, the husband of the deceased came down from abroad. The deceased unable to bear the taunts of the petitioner, poured



kerosene on herself and self immolated herself on 17.01.2009 at about 10.40 a.m. She was rushed to hospital. Since Elavarasi had suffered extensive burns, the learned Judicial Magistrate No.II, Thiruvaiyaru recorded her dying declaration also. That was marked as Ex.P.7. In the dying declaration the deceased had stated that there was a quarrel between herself and Nathiya. In the previous evening Nathiya had spoken ill of her character and she was unable to bear the same. The deceased/Elavarasi died on 26.01.2009 at about 06.30 p.m. Crime No.26 of 2009 was registered on the file of Athirampattinam Police Station. Based on the complaint given by P.W.1/Muthulakshmi. Investigation was undertaken and final report was filed and the same was taken on file in S.C.No.283 of 2009, on the file of the learned Assistant Sessions Judge, Pattukkottai.

3.The prosecution examined as many as 13 witnesses and marked Ex.Ps.1 to 11. On the side of the accused no evidence was adduced.

4.The learned Trial Magistrate acquitted A1, A3 and A4 and convicted the petitioner alone for the offence under Section 306 of I.P.C and sentenced her to two years rigorous imprisonment and levied a sum of Rs.1,000/- as fine and default sentence also imposed. Questioning the same, the petitioner filed C.A.No.117 of 2010 before the learned Additional Sessions Judge, Fast Track Court-II, Pattukkottai. The First Appellate Court by judgment dated 07.01.2011 dismissed the appeal and confirmed the conviction and sentence passed against the petitioner by the Trial Court. Challenging the same, this criminal revision case has been filed.

5.The learned Government Advocate (Crl. Side) appearing for the respondent submitted that in the dying declaration recorded by the learned Judicial Magistrate, the deceased implicated the petitioner herein in clear terms and that therefore, the judgments passed by the Courts below do not warrant any interference.

6.This Court carefully went through the contents of the dying declaration. The only allegation made against the petitioner is that she had spoken ill of the character of the deceased/Elavarasi.

7.The learned counsel appearing for the petitioner placed reliance on the decision of **S.S.Chheena Vs. Vijay Kumar Mahajan and another** reported in **(2011) 1 MLJ (Crl) 547**. The Honourable Supreme Court in the decision held as under:-

"28.Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing



of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation."

8. In this case no doubt the petitioner herein had conducted herself in an abominable manner. The deceased/Elavarasi must have been a chaste woman. That is why unable to bear the taunts, she chose to die by self immolation. The manner in which the deceased committed suicide should shake anybody's heart. Yet, this Court must hold that there is nothing on record to indicate that the petitioner instigated or aided in the commission of suicide by Elavarasi. Elavarasi was so sensitive that she resorted to the extreme step. The petitioner can be guilty of criminal defamation. But then, the act committed by her will not attract Section 306 of I.P.C. The Courts below did not determine the ingredients which would constitute the offence under Section 306 I.P.C. In this view of the matter, the judgments of the Courts below are liable to be set aside. Accordingly, the judgments of the Courts below are set aside and the criminal revision case is allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

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To:

1. The Additional District and Sessions Judge (FTC-II),
Pattukkottai.

2. The Assistant Sessions Judge,
Pattukkottai.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Inspector of Police,
Athirampattinam Police Station,
Thanjavur District.

+1 CC to M/s.G.KARNAN, Advocate (SR-70295[F] dated 20/06/2019)

**Crl.R.C. (MD) No.83 of
2011
20.06.2019**

KM/ (25.09.2019) 4P 5C