

BAIL SLIP

Please state whether the accused Kasim @ Muhamed Kasim S/o. Raud Basha, in S.C.No 382 of 2010 on the file of the Sessions Judge Mahalir Needhimanram, Chennai and on your file was released on bail as ordered in criminal M.P.No. 295/2013 in Criminal Original Petition APPL.No. 295 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:02.03.2020

PRONOUNCED ON:11.03.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

CRL A.No.295 of 2013

Kasim

...Appellant/Accused

Vs.

State Rep by
Inspector of Police
D3 Ice House Police Station
Ice house,
Chennai

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code praying to set aside the Judgment and sentence passed by the learned Sessions Judge (Mahalir Needhimandram), Chennai in S.C.No.382 of 2010 dated 26.03.2013 convicting the appellant for a offence under Section 306 I.P.C the appellant is sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 6 months Simple Imprisonment.

For Petitioner : Mr. M. Rajavelu

For Respondent : Mr. R. Ravichandran
Government Advocate (Crl. side)

JUDGMENT

Assailing the judgment dated 26.03.2013 passed in SC No.382 of 2010 on the file of the Sessions Judge (MahalirNeedhimandram), Chennai, convicting the accused / appellant for an offence under Section 306 of IPC and sentencing him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for six months, the appeal has been preferred by the accused.

2. Briefly stated, according to the prosecution case, the accused and the complainant's daughter Munira Begum, nearby residents, had been engaged in love for nearly two years and on coming to know of the same, the elders of both the family decided to arrange the marriage between the accused and Munira Begum and also betrothal had been performed between them and the families had agreed to celebrate the marriage of the accused and Munira Begum one year thereafter and consequently it is stated that the accused and Munira Begum started frequently moving closely with each other and resultantly, Munira Begum got conceived and on coming to know that she had become four months pregnant, the complainant along with her daughter Munira Begum went to the accused on 17.12.2008 at about 9 AM and apprised him about the factum of Munira Begum having conceived and being four months pregnant and accordingly, requested him to fix the marriage with her daughter immediately and if the marriage is not celebrated, they will be put to shame and to the abovesaid request put forth by the complainant, it is stated that the accused had refused to marry Munira Begum and that he had informed that he could decide about his marriage only after consulting with his friends and if there is any urgency on the part of the complainant and her daughter, they could arrange some other person to marry Munira Begum and on hearing the abovesaid version of the accused, noting that the accused had ignored her and put her to shame, it is stated that, Munira Begum rushed to upstairs and locked the door and doused kerosene on her and set herself to fire and resultantly, she having died, according to the prosecution, the accused, having abetted the suicide of Munira Begum, is liable to be punished under Section 306 of IPC.

3. Following the abovesaid incident, the complaint had been lodged by P.W.1, Katheeja, marked as Ex.P1 and it is seen that the complaint had been immediately preferred on the same date of occurrence i.e 17.12.2008. Immediately on the basis of the same, it is found that the case had been registered and thereafter, after conducting investigation and obtaining the cause of death of the deceased Munira Begum after examining the witnesses acquainted with the occurrence, it is found that the

final report had been laid against the accused under Section 306 of IPC.

4. To sustain the prosecution case, in toto, P.Ws.1 to 12 were examined and Exs.P1 to P9 were marked. M.O.1 was also marked. After the closure of the prosecution witness, the accused was examined under Section 313 of Cr.PC, qua the incriminating evidence put forth against him by the prosecution witnesses and the accused had denied the same. On the side of accused, D.Ws.1 and 2 were examined and Ex.D1 was marked. No M.O. was marked.

5. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to convict the accused under Section 306 of IPC and sentenced him to undergo Rigorous Imprisonment for 10 years and also directed him to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for 3 months. Challenging the same, the present Criminal Appeal has been preferred by the accused.

6. The deceased Munira Begum is found to be the adopted daughter of P.W.1 Katheeja and her husband Fakrudeen (P.W.2). As above pointed out, on the side of accused two witnesses were examined as D.Ws.1 and 2. D.W.1 is the mother of the accused. D.W.1 has clearly admitted during the course of Chief Examination that the accused had loved the deceased Munira Begum and the elders of both the families had decided to fix the marriage of the accused and the deceased Munira Begum and with that end, they had celebrated the betrothal function. However, they had decided to celebrate the marriage after some time. On similar line, D.W.2, the maternal aunt of the accused had also tendered evidence. It is found that the accused had not disputed the love affair, which he had with the deceased Munira Begum. In fact, acknowledging the love affair, the elders of both the families had also decided to celebrate their marriage and with that view, as above pointed out, the betrothal function had also been celebrated. The fact remains that the elders of the family had decided to celebrate the marriage some time thereafter. In the light of the abovesaid undisputed facts, it is seen that, inasmuch as the deceased Munira Begum and the accused are living nearby, following the betrothal function as well as their love affair even prior to the same, they had started moving closely with each other. Now, according to the prosecution, on account of the close acquaintance between the deceased Munira Begum and the accused, Munira Begum got conceived and she became pregnant. When the factum of the deceased Munira Begum having conceived and becoming pregnant had come to the knowledge of the parents, namely, P.Ws.1 and 2, it is found that the P.W.1 along with her daughter, namely, Munira

Begum, had approached the accused on 17.12.2008 and informed him about the pregnancy of the deceased Munira Begum and accordingly requested the accused to arrange the marriage immediately or else, they will be put to public shame and abuse. However, according to the prosecution, the accused, instead of acceding to their demand, despite the fact that betrothal function between them had already been celebrated, had retorted saying that he cannot marry the deceased immediately and he could decide about the marriage only after consulting his friends and also uttered that if there is any urgency on the part of the complainant and her daughter, they could arrange the marriage of the deceased Munira Begum with some other person and on hearing the abovesaid outburst of the accused openly repudiating the love affair he had with the deceased Munira Begum and thereby putting her to public shame and abuse, according to the prosecution, inasmuch as the accused had gone to the extent of disowning the baby conceived by the deceased Munira Begum apprehending that she would be put to public shame and agony, it is stated that Munira Begum rushed upstairs locked the door and doused kerosene on herself and set fire to herself and thereby died. Thus, it is the case of the prosecution that the accused had committed the offence of abetting to commit the suicide of the deceased Munira Begum and liable to be punished.

7. As regards the occurrence, it is found that immediately thereafter, the complaint had been lodged by P.W.1 Katheeja, which has been exhibited as Ex.P1. Even in the complaint Ex.P1, it is seen that the complainant had averred about the factum of she and her daughter approaching the accused to fix the marriage immediately on account of the gestation of the deceased Munira Begum and the response made by the accused to the same as if he is not ready to celebrate the marriage immediately and also abused her by saying that if she is in any urgency, she could engage some other person for marriage and on hearing the abovesaid outburst of the accused, it is put forth that the deceased Munira Begum rushed upstairs, locked the door and committed suicide by pouring kerosene on her body and setting fire to herself. It is thus found that the complaint had been immediately lodged by P.W.1 and further when the abovesaid incident had happened simultaneously, it is thus noted that P.W.1 being directly acquainted with the occurrence and accordingly deposed about the same in a clear and acceptable manner and despite cross examination nothing has been culled out from her mouth to discredit her testimony or elicit any point in support of the defence version. Similar is the case of P.W.2, Fakrudin, husband of P.W.1 and he has also deposed about the approach made by P.W.1 and the deceased to the accused in arranging the marriage immediately on account of the deceased becoming pregnant. According to P.W.2, he was also present at that time and it is stated by him that on hearing the words from

the accused, disowning his daughter and the baby developed by her, it is put forth by him that unable to face the agonies to be sustained by her in public, the deceased committed suicide by pouring kerosene on her body setting fire to herself. As rightly found by the trial court, P.W.5, Shahin, who is acquainted with the offence, has also deposed on similar lines and P.W.4, Nizam, son of P.W.1 and P.W.2 had come to the scene after coming to know of the incident. Furthermore, P.W.3, Sahida, daughter of P.W.1 and P.W.2 had also tendered evidence on similar lines with P.W.1 and P.W.2. From the evidence of P.Ws. 1 to 5, in toto, it is found that the accused and the deceased Munira Begum had been engaged in love affair for more than two years and accordingly their parents having acknowledge the same, arranged to celebrate the marriage and betrothal function had also been performed as a token to celebrate their marriage, in such view of the matter, it is found that as deposed by P.Ws.1 to 5, in toto, the accused and the deceased Munira Begum, taking the same as an acknowledgment of their relationship, started moving closely with each other by going out independently and on account of the abovesaid close acquaintance, it is seen that, as put forth by P.Ws.1 to 5 in unison, the deceased Munira Begum got conceived and however, had not come out with the truth and only after the development of the pregnancy to a level, it is seen that unable to suppress the same further, had apprised the same to her mother P.W.1, resultantly, it is seen that P.W.1 left with no other alternative, immediately along with the deceased, approached the accused and requested him for the marriage immediately informing about her daughter's pregnancy due to the close acquaintance of her daughter and the accused. Instead of soothing and pacifying the deceased and also giving a positive response to their request particularly when the factum of their betrothal function had not been disputed as above pointed out, the accused is found to have come out openly disowning the love affair which he had with the deceased by refusing to marry her and also asking the deceased to marry some other person if she is in any urgency and accordingly, on seeing the abovesaid utterance of the accused, as rightly put forth by the public prosecutor when the deceased had directly heard about the accused disowning her as well as the baby she had conceived through the accused openly, unable to digest the same and in such view of the matter, it is seen that the deceased had gone to the extent of committing suicide and resultantly rushed upstairs and poured kerosene on her body and set fire to herself and died thereby.

8. Considering the abovesaid evidence adduced by P.Ws.1 to 5 in toto as well as the factum of the love affair between the deceased Munira Begum and the accused having not been repudiated by the accused and also admitted by D.Ws.1 and 2 and their betrothal function having also been admitted, in all, it is

found that the accused by his utterance and exposing his mind set and having openly discarding the deceased and also having uttered that the deceased is free to marry any other person if she is in urgency, thereby disowning the baby conceived by her, in the light of the abovesaid background, when the ingredients of the offence under Section 306 of IPC are that there should be a suicide of a person and that it should have been committed in consequence of abetment by the accused and when the Apex Court in the decision reported in 2001 9 SCC 618 (Ramesh Kumar vs. State of Chattisgarh) has laid down as to what conduct would amount to incitement or instigation and further the Supreme Court has held that before holding the accused guilty of the offence under 306 of IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the deceased had committed suicide due to the abetment of the accused, considering the principles of law enunciated by the Supreme Court in the various decisions and applying the same to the case at hand, when it is seen that the deceased had developed pregnancy following the betrothal function between her and the accused and when it is seen from the evidence of the medical officer P.W.8 and the medical record placed before this Court that a baby embryo has been found in the body of the deceased, in such view of the matter, the factum of the deceased having conceived cannot be easily brushed aside. Therefore, the deceased, as rightly put forth by the public prosecutor, was with the fond hope of marrying the accused following the betrothal function and accordingly is found to have been closely moving with the accused and resultantly became pregnant. When it is found that she was firm that the accused would also confirm that her pregnancy is only due to him, however, when on hearing the words of the accused not only disowning her but also disowning her baby which she had conceived due to him, it is found that the deceased unable to bear the abovesaid utterance of the accused had gone to the extent of putting an end to her life and thereby committed suicide as above pointed out.

9. In the light of the abovesaid factors, as rightly determined by the trial court, when the evidence of P.Ws.1 to 5 is assessed in toto coupled with the evidence of D.Ws.1 and 2, it is seen that the accused's utterance on the date of occurrence played a vital role in driving the deceased to her fate and in such view of the matter, the accused cannot plead or defend that the deceased had died only due to the scolding of her brother Nizam (P.W.4). In this case, the mother of the accused, examined as D.W.1, would state that the deceased's natural mother approached them for celebrating the marriage and she had also acceded to the same and on hearing the same P.W.1 picked up quarrel and both P.W.1 and P.W.4 beat the deceased alleging that it was the deceased who had brought the natural

mother to mediate and on account of the same, according to her, the deceased committed suicide. However, the abovesaid defence version is found to be highly improbable. If really, as deposed by D.W.1, the accused and her mother had agreed to celebrate the marriage between the deceased and the accused on the natural mother's approach, there would have been no necessity on the part of P.Ws.1 to 4 to pick up quarrel with the deceased on account of the same, particularly, when P.W.1 had been endeavouring to celebrate the marriage of the deceased with the accused immediately on coming to know of the pregnancy of the deceased and in such view of the matter, the abovesaid defence version put forth by the accused is found to be highly unbelievable and unacceptable.

10. The other defence version projected by the accused is that both P.W.2 and P.W.4 are involved in narcotic cases and they were frequently called to the police station and accordingly it is put forth that inasmuch as the accused had also been associating with their family, he was also directed by the police to come to the police station at that time and the accused was let off by the police only after P.W.2 and P.W.4 coming to the police station and in that back ground, according to the accused, they had informed that the marriage between him and the deceased would be celebrated after the narcotic cases leveled against the P.W.2 and P.W.4 coming to an end. Only on account of the same, it is stated that false case had been laid against the accused. No doubt some Narcotic cases are pending against P.W.2 and P.W.4. Merely on that score, it cannot be held that the accused had been postponing the marriage between him and the deceased Munira Begum. When it is found that the accused and the deceased Munira Begum are nearby residents and engaged in love affairs for more than two years, naturally, the accused would have been in the know of things about the involvement of P.W.2 and P.W.4 in the narcotic cases. Despite the same, it is found that the accused had performed the engagement function with the deceased Munira Begum and the parties had also proceeded to arrange the marriage immediately thereafter. However, after the deceased had developed pregnancy, the accused, for one or the other reason, started disowning her as well as the baby and in such view of the matter, it is found that the deceased was driven to the position of committing suicide on account of the agony and shame that she would be put and subjected to in the event of the accused refusing to marry her eventually.

11. In the light of the abovesaid factors when it is seen that the accused had been instrumental and instigated and abetted the commission of suicide of the deceased Munira Begum by openly discarding her as well as openly disowning the baby, which she had conceived on account of her acquaintance with him,

unable to bear the public shame and agony that she would be subjected to, it is found that as put forth by the public prosecutor, the deceased had decided to put an end to her life, accordingly, she had committed suicide by setting fire to herself and the facts being above, in my considered opinion, the trial court had rightly appreciated the materials available on record in the right perspective and found the accused guilty under Section 306 of IPC and in view of the same, I do not find any valid reason to interfere with the abovesaid determination of the trial court holding the accused guilty under Section 306 of IPC and sentencing him to Rigorous Imprisonment for 10 years. No mitigating circumstance or factor has been projected to modify or lessen the sentence imposed on the accused.

12. In the light of the abovesaid discussions, the Criminal Appeal is dismissed and the conviction and sentence imposed on the accused by the trial court are confirmed. The trial court is directed to secure the presence of the accused and commit him to prison to undergo the sentence imposed on him as per law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

To

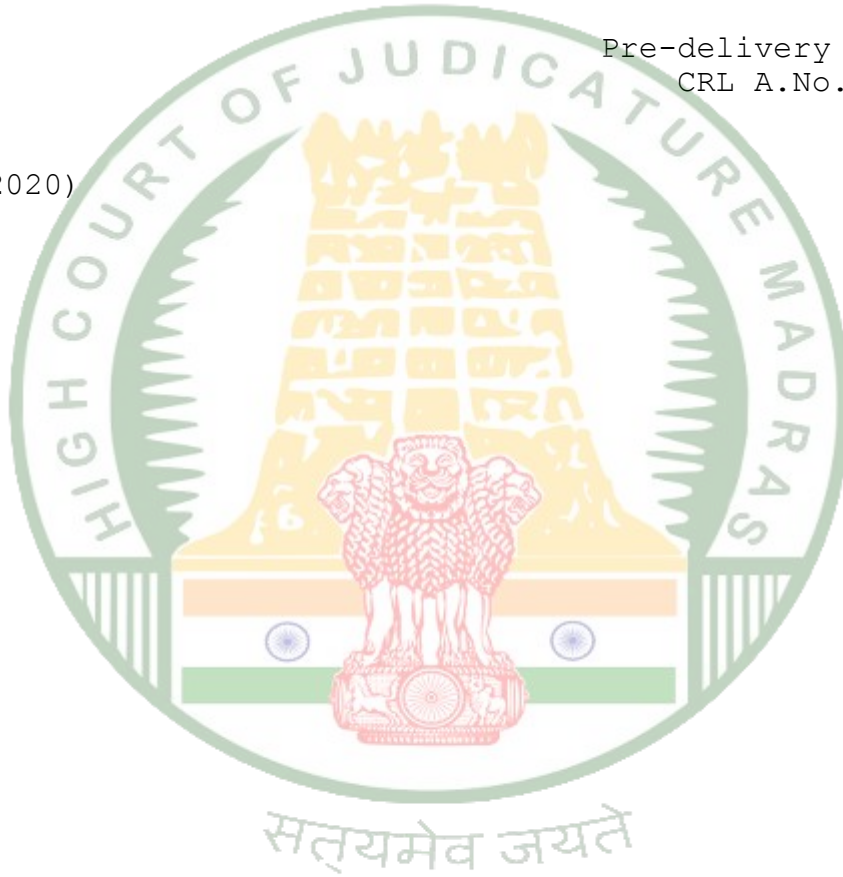
1. The Sessions Judge (Mahalir Needhimanram),
Chennai.
2. The Metropolitan Magistrate,
No XIII
Egmore
Chennai.
3. The Chief Metropolitan Magistrate,
Egmore,
Chennai (For Information)
4. The Superintendent,
Central Prison,
Puzhal,
Chennai.

5. The Public Prosecutor,
High Court,
Madras -104.
6. The Section Officer,
Criminal Section Record,
High Court,
Madras.

+1cc to Mr.M.Rajavelu, Counsel for Petitioner, S.R.No.22336/20

Pre-delivery Judgment in
CRL A.No.295 of 2013

NR(CO)
RN(02/06/2020)



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