



BAIL SLIP

Rajesh, S/o.Ahimsa, male, age about 28 years was released on bail vide Court Order dated 12.08.2015 made in MP(MD)No.1 of 2015 in Crl.A(MD)No.156 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 06.03.2020

CORAM

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

CRL. A(MD)NO. 156 OF 2015

Rajesh

.. Appellant/A1

- Vs -

State rep. by
The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District,
In Crime No.511/2011.

.. Respondent

Criminal Appeals filed u/s 374 (2) of the Code of Criminal Procedure to set aside the conviction and sentence imposed by the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur in S.C.No.193 of 2012 dated 02.07.2015.

For Appellant : Mr.R.Paul Sukumar

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

The appellant/A1 was charged and tried before the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, for the offences u/s 417, 376 and 306 IPC and on being found guilty, the appellant/A1 was convicted and sentenced to undergo rigorous imprisonment for a period of 1 year together with a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of three months for the offence u/s 417 IPC and sentenced to undergo rigorous imprisonment for a period of 10 years together with a fine of Rs.25,000/-, in default, to undergo simple imprisonment for a period of one year for the offence u/s 376 IPC and sentenced to undergo rigorous imprisonment for a period of 10 years together with a fine of Rs.25,000/-, in default, to undergo simple imprisonment for a period of one year for the offence u/s 306 IPC and directed the appellant/A1 to run the sentences concurrently and set off, as



applicable u/s 428 Cr.P.C, was ordered. The appellant/A1, aggrieved by the said conviction and sentence, has preferred the present appeal.

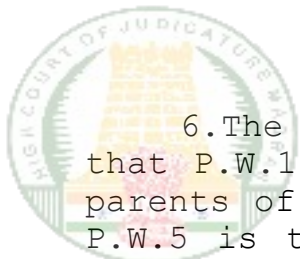
2. For the sake of convenience, the parties are referred to by their own ranking before the trial Court.

3. The case of the prosecution as unfolded from the evidence available on record, is as under :-

The appellant/A1 fell in love with the deceased. On 07.09.2011, the appellant/A1 and the deceased Banumathi @ Balmathi went to Kodaikanal and performed their marriage in Kujinji Andavar Temple and after that, the appellant/A1 had sexual intercourse with the deceased. Thereafter, the appellant/A1 interacted with the deceased person, if he denied the marriage, what she will do and immediately, the deceased panicked and she informed to her brother. Thereafter, the other prosecution witnesses, namely, P.W.2 to P.W.5 went to the A1 to A4's house for marriage proposal. However, A1 to A4 used abusive language against the family members of the deceased and they have returned back and pacified the deceased person and sent to the house of P.W.1, who is working as Sub-Inspector of Police in Srivilliputhur. Thereafter, she committed suicide in P.W.1's house, whereby, P.W.1 gave a complaint (Ex.A1) before the Law Enforcing Agency. After complaint, the Law Enforcing Agency filed First Information Report in Crime No.511 of 2011 under Sections 417, 376 and 306 of IPC and the charge sheet has been filed and it is taken on file as S.C.No.193 of 2012 by Fast Track Mahila Court, Virudhunagar District at Srivilliputhur.

4. The accused was furnished with the relied upon documents u/s 207 Cr.P.C. and the case was committed to the Court of Sessions, which was thereafter made over to the Court of Fast Track Mahila Court, Virudhunagar District at Srivilliputhur and a charge u/s 376, 417 and 306 IPC was framed. When questioned, the accused pleaded not guilty.

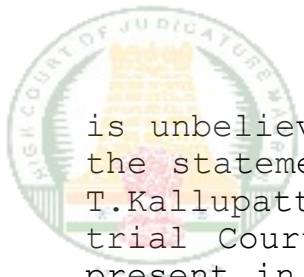
5. To prove the case, the prosecution examined P.Ws.1 to 19, marked Exs.P-1 to P-18 and M.O.s 1 to 4. When the accused were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. On the side of the accused, neither any oral evidence nor any documentary evidence was adduced. The trial court, after hearing either side and after considering the materials, both oral and documentary, available on record, acquitted the accused Nos.2 to 4 and convicted the appellant/A1 for the offences under Sections 417, 376 and 306 IPC. Aggrieved by the said conviction and sentence recorded by the trial Court, the appellant/A1 has filed the present appeal.



6.The learned counsel appearing for the appellant/A1 submitted that P.W.1 is the brother of the deceased, P.W.2 and P.W.3 are the parents of the deceased, P.W.4 is elder brother of the deceased and P.W.5 is the brother-in-law of the deceased. All those witnesses are interested witnesses, except P.W.17, who is the relative of the appellant/A1. Further, in the present case, the respondent prosecuting agency failed to produce the material with regard to the marriage performed in between the appellant/A1 and the deceased person at Kodaikanal and no Poojari or the witnesses were examined and the further allegation against the appellant/A1 is that they stayed in a lodge at Kodaikanal and had sexual relationship with the deceased. To that effect, the lodge Manager and other persons were not examined as witnesses. The evidences in respect of the allegation against the appellant/A1, as if he performed the marriage with the deceased person at Kodaikanal and stayed in a lodge and had sexual intercourse with the deceased, are completely imaginary one and no materials are available with regard to the marriage and the sexual relationship with the deceased person by the appellant/A1.

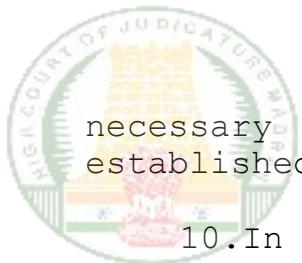
7.The learned counsel appearing for the appellant/A1 further submitted that on the fateful day on 12.09.2011, admittedly, the deceased person stayed in the house of P.W.1 and at 7.00 a.m, the deceased person happily combing her hairs, however, she committed suicide at 7.45 p.m. He further submitted that P.W.1 did not give any explanation with regard to the suicide committed by the deceased person between 7.00 a.m and 7.45 a.m. Further, P.W.1 deposed that he and one Mohan, who is the Sub-Inspector of Police and residing as neighbour, broke open the door and lift the body. However, the said Mohan was not examined as a prosecution witness and there is no proper explanation that when the deceased happily combing her hairs at 7.00 a.m, what is the unforeseen situation to take extreme step to commit suicide in between 7.00 a.m and 7.45 a.m. In the absence of proper explanation with regard to the happenings between 7.00 a.m and 7.45 a.m, the allegation made against the appellant/A1, as if the accused person instigated the deceased person to commit suicide, is unbelievable one and accordingly, he prayed for acquitting the appellant/A1 by allowing this criminal appeal.

8.Further, the learned counsel submitted that the ceiling height and the body was not measured by the experts, though the recovery namely, rope and pen from the place of occurrence was mentioned in the Form 95. No stool and other things were recovered from the place of occurrence and there is no evidence to that effect. Hence, the suicide itself is suspicious one in that particular place. Further, the learned counsel would submit that the only evidence available to implicate the appearance of the appellant/A1 along with the deceased person is P.W.17. But the evidence of P.W.17 is no clarity, for the reason that he is working as Teacher in the Government School at Puthuppatti and without obtaining leave, he came from Puthuppatti to T.Kallupatti bus stand



is unbelievable one. Further, since P.W.17 is the school Teacher, the statement that during working hours, he came from Puthupatti to T.Kallupatti is unbelievable and no records were placed before the trial Court to prove that he had taken leave from his school and present in T.Kallupatti. To that effect, the school Headmaster was not examined. Further, in the present case, the appellant/A1 did not instigate the deceased and there is no relationship as alleged by the prosecution. Accordingly, he prayed for allowing this appeal. In support his contention, the learned counsel relied a decision of the Hon'ble Apex Court reported in **(2019)10 SCC 188** in the case of **State of West Bengal vs. Indraajith Gundu and others**.

9.Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the State submitted that admittedly, no document was marked in order to prove the marriage of the appellant/A1 and the deceased person, however, the prosecution case is without knowledge of the parents of the deceased as well as the appellant/A1, the appellant/A1 with false promise had taken the deceased person to Kodaikanal and performed the marriage at Kurinji Andavar Temple and thereafter, they stayed in a lodge at Kodaikanal and thereafter, the appellant/A1 refused to accept the marriage, whereby, the deceased complained his refusal to P.W.1 and her family members and thereafter, P.W.2 and P.W.5 went to the appellant's house in order to get proper marriage of their daughter with the appellant/A1. However, the other accused persons namely, A2 to A4 refused to accept the marriage of the appellant/A1 and the deceased person and thereby, P.W.2 and P.W.5 returned back and the same was informed to P.W.1. Admittedly, in the present case, the suicide is not disputed. However, in the present case, in order to implicate the accused, two evidences are sufficient. P.W.1 and P.W.17. P.W.1 clearly deposed that his sister made a telephone call from Ganguvarpalayam where his one of the sisters is residing and informed the happenings with the appellant/A1 to the P.W.1. Subsequently, P.W.1 was informed by the other prosecution witnesses namely, P.W.2 to P.W.4 that they went to the residence of the accused for the purpose of marriage proposal. But all those efforts were went on fail and thereby, the parents of the deceased pacified the deceased and sent the deceased with the P.W.1 to his house, where the P.W.1 is working as Sub-Inspector of Police at Srivilliputhur. Further, in the present case, the suicide note of the deceased was produced along with the complaint/Ex.P.1 and the suicide note merely demonstrated the marriage of the deceased with the appellant/A1 and other subsequent incidents are clearly demonstrated in the suicide note. The prosecution demonstrated the events by marking the suicide note, which is marked as Ex.P.2. Further, the evidence of P.W.1 and P.W.17 is sufficient to implicate the accused under Sections 306 and 417 of IPC. Further, the learned Additional Public Prosecutor would submit that the appellant/A1 had physical relationship with the deceased at Kodaikanal and the physical relationship is also confirmed by the suicide note. Hence,



necessary ingredients recovered under Section 376 are also established.

10. In support of his contention, the learned Additional Public Prosecutor relied on a decision of the Hon'ble Apex Court reported in **(2012) 9 SCC 734** in the case of **Praveen Pradhan vs. State of Uttaranchal and another**. Reiterating the decision, the learned Additional Public Prosecutor would submit that the bare instigation would not give a literal meaning to the word 'instigate', the abatement by instigation depends upon the intention of the person who abets not upon the act which is done by person who has abetted. The abetment may be by the instigation, conspiracy, intentional, aim as provided under Section 107 of IPC. The said issue was elaborately considered by the Hon'ble Apex Court in the above said case. The learned Additional Public Prosecutor would submit that since the necessary ingredients were required for establishing the offence under Sections 306 and 417 of IPC, the trial Court rightly convicted the accused, which need not be interfered with. Further, he would submit that the suicide note is compared with the signature of the deceased person. Admittedly, the comparative document of the year 2003 was compared with the suicide note and P.W.15 Expert opined that the suicide note is matched with Ex.P.2 Diary Book written by the deceased person. Hence, he prayed for dismissal of the appeal.

11. The issues arise for consideration in the present case are:-

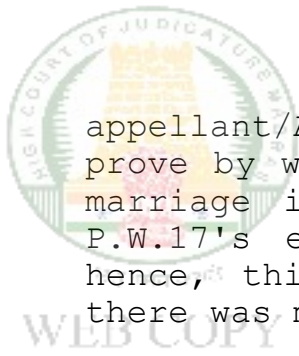
- (a) whether the marriage of the appellant/A1 and deceased person was established?
- (b) whether the appellant/A1 instigated the deceased to commit suicide?
- (c) whether necessary ingredients were recovered under Section 376 IPC ?

12. It is seen from the records that in the present case, P.W1 to P.W6 are the family members of the deceased. P.W1, is the brother of the deceased and he was working as Sub-Inspector of Police in Srivilliputhur Police Station at the relevant point of time. P.W.2 and P.W.3 are the mother and father of the deceased. P.W.4 elder brother of the deceased. P.W.5 is the brother-in-law of the deceased and P.W.6 is the brother in law of P.W.1. P.W.7 is the hearsay evidence and P.W.8 is the wife of P.W.1. P.W.9 is the Village Administrative Officer, who is a witness in the observation mahazer. P.W.10 is the Scientific Officer. P.W.11 is the Forensic Expert who certified the viscera report. P.W.12 is the doctor, who conducted potential test of the appellant/A1. P.W.13 is the doctor, who conducted the postmortem. P.W.14 is the Sub-Inspector of Police, who registered the FIR (Ex.P.12). P.W.15 is the Handwriting Expert, who compared the suicide note as well as diary of the deceased and his opinion is marked as Ex.P.13. P.W.16 is the Postmortem Constable. P.W.17 is the relative of the accused, who deposed about the presence of the deceased person along with the



accused in T.Kallupatti village, where they returned back from the Kodaikanal. P.W.18, Revathi, who is residing at Gangalulam, has deposed evidence with regard to the dropping of the deceased person by the accused/A1. P.W.19 is the Investigation Officer.

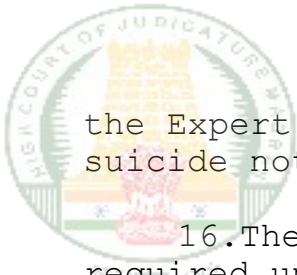
13. The gravity of the prosecution case is that the appellant/A1 and the deceased are lovers and they left the parental home and performed their marriage at Kodaikanal in Kurinji Andavar Temple and thereafter, they stayed in lodge two days and again came back after two days in Kanguvarpalayam and the appellant/A1 dropped the deceased and informed her that if he denied tying 'thalli', what will happen and immediately, the deceased panicked and stayed at P.W.18's House at Gangakulam. The evidence of P.W.1 further reveals that his sister was not available on 07.09.2011 and the entire family members searched her, however, the deceased called P.W.1 on 09.09.2011 and informed that the appellant/A1 left the deceased at Gangakulam and he gave Rs.550/- on her face and leave the deceased person in Gangakulam and thereafter, P.W.1 informed the deceased that he sent his father and pacified her and thereafter, P.W.2 to P.W.5 went the accused house, where the accused insulted the family members of the P.W.1, namely, P.W.2 to 5, hence, they were returned. In order to pacify the deceased, P.W.2 to 4 left the deceased in the P.W.1's house at Srivilliputhur Police Quarters where she committed suicide by leaving the suicide note. Admittedly, PW.1 interacted with his sister over phone and directly where she stayed in the house on 12.09.2011 and further it is revealed from the evidence of P.W.1 that he saw his sister at 07.00 a.m on 12.09.2011 at the doors-steps where she combing her hairs, however, later, she hanged herself in the room and her body was lifted by P.W.1 and one Mohan. Admittedly, the said Mohan was not examined as a witness. In the scenario, this Court has to consider whether the evidence of P.W.1 is trustworthy. But when the P.W.1's evidence was compared with the evidence of P.W.2 to P.W.4, they were categorically corroborated the evidence of P.W.1. P.W.2 deposed that the deceased is the 12th child and she had love affair for the past two years with the appellant/A1 and he repeatedly advised the deceased person, however, she refused to forget the appellant/A1, however, the marriage and other things were came to knowledge of P.W.2 subsequently, through P.W.1. The unavailability of the deceased person on 07.09.2011 was informed to P.W.1 and they searched her, however, they found that she stayed at Gangakulam at Revathi's house and the deceased informed P.W.1 and P.W.2. To that extent, P.W.2's evidence is clearly corroborated with other evidence. Further, P.W.3 and P.W.4 evidenced the same version and they were corroborated. Further, the availability of the deceased person along with the appellant/A1 is confirmed by PW.17 who is none other than the relative of the appellant/A1 and he is working as school Teacher in Government School at Puthupatti and he came to T.Kallupatti and the appellant/A1 informed P.W.17 that he performed the marriage with the deceased person. P.W.17, who is the relative of the appellant/A1, confirmed the marriage of the



appellant/A1 and the deceased, for which, there is no necessity to prove by way of documents. When the person decided to perform the marriage in the temple, the same was informed to the relatives. P.W.17's evidence is corroborated with the prosecution evidence, hence, this Court has no hesitation to accept the evidence that there was marriage between A1 and the deceased person.

14.Initially, the Law Enforcing Agency implicated the appellant/A1 as well as the parents of appellant/A1. However, the trial Court acquitted the parents of the appellant and convicted the appellant/A1 alone in the present case. Now, this Court has to decide whether the appellant/A1 has instigated the deceased person to commit the suicide.

15.In view of the above, this Court has already come to the conclusion that the marriage was proved by the evidence of P.W.17, who is the relative of the appellant/A1 and the appellant/A1 also refused to accept the deceased person and the other family members of the deceased went to the appellant's house for the purpose of their marriage, however, the appellant/A1 and other accused person refused to accept the deceased person and this Court can easily draw the presumption that the deceased person was in a depressed condition. In this background, it is necessary to refer the decision of the Hon'ble Apex Court reported in **(2012) 9 SCC 734** (cited supra), wherein, the Hon'ble Apex clearly held that instigation has to be gathered from the circumstances of the particular case and no strait-jacket formula can be laid down to find out whether in a particular case, there has been instigation which forced a person to commit suicide. In a particular case, there may not be a direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such cases, an inference has to be drawn from the circumstances and it has to be determined whether circumstances had been such fact and created the situation that the person felt totally frustrated and committed suicide. In the present case, the deceased person had full faith with the appellant/A1 and their marriage was performed at Kodaikanal and the said marriage was confirmed by P.W.17 and it is also admitted fact that the appellant/A1 left the deceased at Gangakulam and thereafter, she was under the care and custody of P.W.1 to P.W.5. Further, P.W.2 to P.W.5 wanted to confirm the marriage, however, efforts were went on fail, since the accused person failed to marry. Hence, this Court can easily draw the presumption that due to non-acceptance of the appellant/A1, the deceased person went to extreme step of committing suicide. Hence, this Court has no hesitation to arrive at conclusion that the appellant/A1 has instigated the deceased person to commit suicide. Hence, the evidence of P.W.1 and P.W.17 and other witnesses have clearly corroborated with each other and further, the suicide note also corroborated with the other evidences, which is in clear terms and



the Expert's opinion also opined that the signature contained in the suicide note is the signature of the deceased.

16.The next issue with regard to whether necessary ingredients required under Section 376 IPC is established.

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17.This Court, for the purpose of implicating the appellant/A1 under Section 376 IPC, carefully perused the suicide note (Ex.P.2) wherein the deceased narrated the incidents happened from the marriage with the appellant/A1 till her stay at Gangakulam. However, the deceased did not mention without her consent, the accused committed rape either in the hotel or in the some other places and after the marriage, he refused to accept that they stayed in the hotel. Further, the postmortem report and doctor's evidence did not disclose that the appellant/A1 committed rape and the prosecution did not establish that the appellant/A1 committed rape. Hence, the charge against the appellant/A1 for the offence under Section 376 IPC is not proved.

18.Accordingly, the appellant/A1 is acquitted for the offence under Section 376 IPC alone. However, the conviction passed by the Court below on the appellant/A1, for the offences under Sections 417 and 306 IPC is confirmed and the sentence alone is modified to the effect that the appellant sentenced to undergo Rigorous Imprisonment for a period of 1 year together with a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for a period of three months for the offence u/s 417 IPC and sentenced to undergo Rigorous Imprisonment for a period of 3 years together with a fine of Rs.25,000/-, in default, to undergo Simple Imprisonment for a period of one year for the offence u/s 306 IPC and directed the appellant/A1 to run the sentences concurrently. Set-off, as ordered by the Court below under Section 428 Cr.P.C, is maintained.

19.In the result, the Criminal Appeal is allowed in part. It is reported that the appellant/A1 is on bail. The bail bond executed by the appellant/A1 shall stand cancelled and the trial Court is directed to take steps to secure the appellant/A1 and send him to jail to undergo the remaining period of sentence as per this Judgment.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Virudhunagar District at Srivilliputhur.
2. The Judicial Magistrate No.II, Srivilliputhur.
3. The Chief Judicial Magistrate,
Virudhunagar District at Srivilliputhur.
4. The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District
5. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

Copy to: The Section Officer, Criminal Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

JUDGMENT IN
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SMA/02/06/2020/9P/8C