

Bail Slip

The Accused/Appellant Mrs.K.Suganya,W/o.Kannappan, female, has been released on bail per order of this Hon'ble Court made in Crl.MP(MD)No.1 of 2015 in Crl.A(MD)No.334 of 2015, dated 05.11.2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.334 of 2015

K.Suganya

... Appellant /Accused No.1

Vs.

State represented by
the Inspector of Police,
Sivagangai Police Station,
Sivagangai District.
[Crime No.85 of 2010]

... Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment and conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai in S.C.No.131 of 2011, dated 27.10.2015.

For Appellant : Mr.AL.Kannan

For Respondent : Mr.Robinson

Government Advocate (crl side)

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellant in S.C.No.131 of 2011 by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai dated 27.10.2015.

2.This appellant along with four others were tried for the offence under Section 306 IPC before the learned Mahila Court, Sivagangai in S.C.No.131 of 201. The trial Court acquitted accused Nos.2 to 5 under Section 235 CrPC from the charges and found this appellant guilty for the offence under Section 306 IPC, convicted and sentenced her to undergo five years rigorous imprisonment with a fine of rupees two thousand, in default of payment of fine, to undergo four months rigorous imprisonment. Aggrieved over the conviction and sentence, the first accused filed this appeal.

3.The brief facts of the prosecution's case are that the appellant is the daughter-in-law of PW1 Kunjaram and PW3 Veerappan. She was married to Kannappan, son of PW1 and PW3, two



years prior to the occurrence and her husband was working in Singapore. PW3 father-in-law of the appellant was working at Thiruthani. This appellant was living with her mother-in-law [PW1] and her unmarried sister-in-law Kannathaal [deceased]. The deceased and this appellant were in loggerheads and the appellant was intending to arrange for a separate family. On the date of occurrence, on 16.05.2010, when the appellant decided to have a separate cooking, there was a wordy quarrel between the appellant and the deceased. The appellant informed this incident to her parents and therefore, the other accused, viz., the father of the appellant Periyasamy along with his sons and daughter came to their house, quarrelled with the deceased and also assaulted her around 7.00pm on the same day. Consequent to this incident, the deceased committed suicide by hanging.

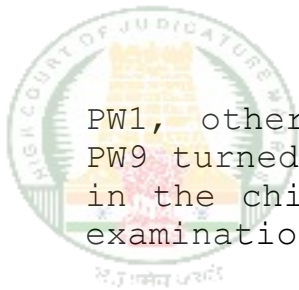
4. On the complaint of PW1 in Exp1, the Sub Inspector of Police, Vimala [PW12], registered a case in Crime No.95 of 2010 on 17.05.2010 for the offence under Section 174 CrPC. PW12 also went to the place of occurrence around 10.40am and prepared an observation mahazar and rough sketch in the presence of PW8 and PW11. The observation mahazar and the rough sketch prepared by PW12 are marked as Exp6 and Exp7 respectively. She also examined the witnesses PW1, PW6, PW2 and PW3 and recorded their statements. Thereafter, she went to the Government Hospital at Sivagangai, where the dead body was lying and conducted an inquest around 11.30am in the presence of Panchayatars. The inquest report is marked as Exp8. After completing the inquest, she made a request for postmortem through Head Constable PW7.

5. PW10 Vidya, Doctor at Sivagangai Government Hospital, conducted autopsy on 17.05.2010 at about 1.25pm and issued the postmortem certificate [Exp3]. According to the Doctor, the deceased would appear to have died, 12 to 14 hours prior to the autopsy and the death was due to asphyxia due to hanging.

6. The further investigation was carried out by one Ashokan, Inspector of Police, but he died during the trial and therefore, he was not examined. The Inspector of Police, who filed the final report altered Section 174 CrPC and filed a final report as against this appellant and others for the offence under Section 306 IPC.

7. During the trial, on the side of the prosecution, 12 witnesses were examined and 10 documents were marked. On the side of the accused neither witness was examined nor was any document marked.

8. PW1 is the complainant and the mother of the deceased, PW3 is the husband of PW1 and the father of the deceased. Except



PW1, others are hearsay witnesses. The mazhar witnesses PW8 and PW9 turned hostile. PW1, who supported the case of the prosecution in the chief examination has also turned hostile during the cross examination.

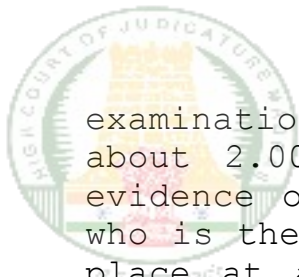
9.The incriminating materials were placed before the accused under Section 313 CrPC and the accused had denied the same.

10.In conclusion of the trial, the trial Court found this appellant guilty, convicted and sentenced her as stated supra. As against the conviction and sentence imposed, the appellant has preferred the present appeal.

11.Heard Mr.AL.Kannan, learned Counsel appearing for appellant and Mr.Robinson, learned Government Advocate (Crl Side) appearing for the State.

12.The learned Counsel for the appellant submits that except PW1, there is no other witness to substantiate the case of the prosecution and even according to the prosecution, there was a wordy quarrel between this appellant and the deceased Kannathaal on the date of occurrence at about 2.00pm and on the information from the appellant, her father, brothers and other accused in this case came to the occurrence village and assaulted the deceased and having felt ashamed of it, she committed suicide. Appreciating the evidence, the trial court acquitted accused Nos.2 to 5, whereas, found this appellant guilty and convicted. Even according to the prosecution case, the other accused are said to have assaulted the deceased and only on account of that the deceased committed suicide and this overt act of assault is attributed only to accused Nos.2 to 5 and not to this appellant, and the prosecution has not chosen to file any appeal as against the order of acquittal and therefore, the benefit of doubt extended to accused Nos.2 to 5 is also applicable to this appellant and moreover, there is no specific overt act as against this appellant that there was a wordy quarrel between this appellant and the deceased on the date of occurrence at about 2.00pm. He would further submit that the defence has established from PW1 that the deceased Kannathaal was having affairs with one Murugesan and he also used to visit their house often. Since Murugesan married another girl, the deceased committed suicide and PW1 taking advantage of it, has foisted this complaint as against her daughter - in -law to eliminate her from his son's life and to arrange a marriage for her son with another woman. Therefore, the learned Counsel prayed that the appeal be allowed.

13.Per contra, Mr.Robinson, learned Government (Crl Side) submitted that though PW1 was treated as hostile during the cross



examination, PW1 has stated about the occurrence took place at about 2.00pm and at 7.00pm on the date of occurrence and this evidence of PW1 is also corroborated by the the evidence of PW2, who is their neighbour. PW2 has also witnessed the occurrence took place at about 2.00pm and this available evidence clearly shows that this appellant quarrelled with the deceased, abused her and also assaulted her through her relatives and on account of which, the deceased committed suicide. Therefore, the prosecution has proved its case and therefore, prayed for dismissal of this appeal.

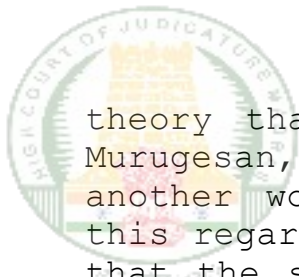
14.This court paid its anxious consideration to the rival submission made on either side and perused the available records.

15.Admittedly, the deceased in this case is the sister-in-law of the appellant and the husband of the appellant was working in abroad during the relevant point of time. This appellant was living with her mother-in-law PW1 and the deceased sister-in-law. On the date of occurrence, this appellant decided to have a separate cooking and the same was objected to by PW1 and the deceased. There arose a wordy quarrel and also scuffle. The appellant informed this incident to her father accused No.2 and therefore, accused No.2 with his sons and daughter came to their house and questioning the conduct of the deceased for having assaulted his daughter, are said to have assaulted the deceased.

16.The second occurrence took place at 7.00pm and on the next day morning, the deceased committed suicide by hanging. The Doctor [PW10] in her postmortem certificate gave her opinion that the deceased appears to have died due to asphyxia due to hanging.

17.Admittedly the death was due to hanging and prior to the death, an incident took place at about 2.00pm and another incident took place at 7.00pm on the previous day. In the incident took place on 16.05.2010 at about 2.00pm, there was a wordy quarrel between the deceased and the appellant, in view of the decision taken by the the appellant to have a separate cooking. Consequent to this incident, the other accused, who came in support of this appellant are said to have assaulted the deceased and therefore, the deceased committed suicide.

18.The other accused were acquitted by the trial Court and as against the order of the acquittal, the State has not preferred any appeal. The conviction under Section 306 IPC could not be sustained on the same allegation of wordy quarrel between the accused and the deceased. Except this wordy quarrel, which is said to have taken place between the deceased and the appellant on the previous day at about 2.00pm, there is no other overt act against this appellant. On the other hand, the defence has established the



theory that the deceased was having some relationship with one Murugesan, who used to visit their house often and he married another woman and therefore, the deceased committed suicide. In this regard, PW1 as well as PWs 4 and 5 admitted in their evidence that the said Murugesan used to visit their house often and also used to stay in their house at times and he was unmarried at that time and only after the demise of the deceased, he married another woman.

19.Be that as it may, what is required to constitute an offence under Section 306 IPC, there must be an active role of instigation or certain act, which could have facilitated the commission of offence. But in this case, except this averment of wordy quarrel took place between the deceased and the accused, where both have exchanged words and also quarrelled with each other, there is no averment as against this appellant.

20.In this regard, the Hon'ble Supreme Court in Rajesh Vs State of Haryana, reported in 2019 (6) SCJ 231 has held as follows:

"7. It is necessary to refer to Section 306 IPC and Section 107 IPC 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 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

9.The term instigation under Section 107 IPC has been explained in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi 2) 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 1 (2010) 1 SCC 707 2 (2009) 16 SCC 605: (2010) 3 SCC (Crl.) 367 6 "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 "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, 7th 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 3).

11.We are of the opinion that the evidence on record does not warrant conviction of the Appellant under Section 306 IPC. There is no proximity between the Panchayat held in September, 2001 and the suicide committed by Arvind on 23.02.2002. The incident of slapping by the Appellant in September, 2001 cannot be the sole ground to hold him responsible for instigating the deceased to commit 3 (2012) 9 SCC 734 7 suicide. As



the allegations against all the three accused are similar, the High Court ought not to have convicted the Appellant after acquitting the other two accused.

12.We are not in agreement with the findings of the Trial Court that the deceased (Arvind) committed suicide in view of the continuous threats by the accused regarding his being implicated in a false case of demand of dowry. The evidence does not disclose that the Appellant instigated the deceased to commit suicide. There was neither a provocation nor encouragement by the Appellant to the deceased to commit an act of suicide. Therefore, the Appellant cannot be held guilty of abetting the suicide by the deceased."

21.Considering the available evidence and the decision rendered by the Hon'ble Supreme Court cited supra, the conviction and the sentence imposed as against this appellant are set aside. In the result, this Criminal Appeal is allowed and the conviction and sentence awarded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai vide impugned judgment dated 27.10.2015, in S.C.No.131 of 2011 are set aside and the appellant is acquitted of the charge framed against her. Fine amount, if any, paid by her shall be refunded.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

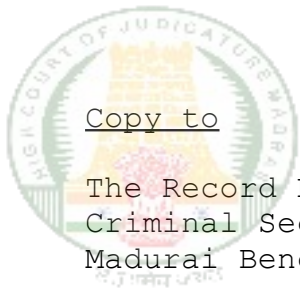
/ /2020

Sub Assistant Registrar(CS)

DSK

To

- 1.The Sessions Judge,
Fast Track Mahila Court, Sivagangai.
- 2.The Superintendent, Central Prison,
Women Special(Women Prison)
Gandhi Market, Trichy.
- 3.The Inspector of Police,
Sivagangai Town Police Station, Sivagangai.
- 4.The Additional Publi Prosecutor,
Madurai Bench of Madras High Court, Madurai.



Copy to

The Record Keeper/Section Officer-2 copies
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

WEB COPY

Crl.A(MD)No.334 of 2015
21.07.2020

KM (29.07.2020) 8P 7C