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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2021

CORAM :

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.A.No.707 of 2015
and
Crl.M.P.No.6619 of 2019

Silambarasan

... Appellant

Vs.

The Inspector of Police,
Morappur Police Station,
Dharmapuri District.

... Respondent

PRAYER : Criminal Appeal has been filed under sections 374 of Criminal Procedure Code to set aside the order in S.C.No.290 of 2014 dated 09.10.2015 convicting the accused by the Mahila Court, Dharmapuri.

For appellant: Mr.K.Murugesan
Legal Aid counsel

For Respondent:Mr.A.Gopinath
Govt. Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been preferred challenging the judgment of the learned Sessions Judge (Fast Track Court), Mahila Court, Dharmapuri, dated 09.10.2015 made in S.C.No.290 of 2014.

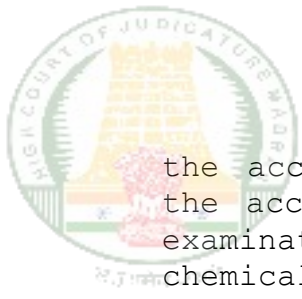
2. The appellant is the accused before the trial Court. According to the case of the prosecution the deceased minor victim aged 15 years was living with her parents and her younger sister. The accused has developed an affair with the minor girl/the first victim/V1 (for the sake of convenience the deceased are referred as V1, V2 and V3). The deceased V2 is the mother of V1. The accused, who is a neighbour of V1 to V3, had developed love affair with V1. On giving false assurance to marry V1, he ravished V1 and in view of that she got conceived



and she was two months pregnant. After coming to know about that, her mother V2 along with her relatives went to the house of the accused and asked about the occurrence. The accused and his parents denied the involvement of the accused. Having got frustrated, on 03.04.2012 at about 9.00 p.m., the mother of V1 gave poison (Monocrotophos) to V1 and V3. Out of frustration V2 has consumed the same poison. All the three died due to consumption of poison. On the complaint given by the father of V2-Chittu, a case was registered against the accused in Crime No.135 of 2012 for the offence under Section 174 of Cr.P.C. PW.22-Sub Inspector of Police on 04.04.2012 has taken up investigation. He went to the place of occurrence and prepared a rough sketch and observation mahazer in the presence of witnesses and recovered empty box of Monocrotophos and two silver tumblers, which were used to consume poison. He also conducted inquest on the body of V2 and prepared inquest report. Thereafter, she sent the body of V2 for post-mortem on the same day. She has enquired the doctor, who had conducted the post-mortem.

3. Thereafter, PW.24-Inspector of Police [Thangaraj] continued the investigation and visited the place of occurrence and enquired some of the witnesses. He has received death information about V1 and went to the Government hospital and conducted inquest on the body of V1 in the presence of Panchayadors and prepared the inquest report Ex.P22 and sent the body for post-mortem. He also seized the letter written by V1 to her father, from her house. A case was registered on the earlier complaint given by PW.1 Chittu itself. On perusing the materials available on record, he altered the charges from 174 Cr.P.C., to 306 IPC and prepared an alteration report and sent it to the Court.

4. Further investigation was continued by PW.25-Inspector of police [Lakshmanakumar], who after getting the death information of V3, went to the Government hospital and conducted inquest and prepared the inquest report Ex.P28; then he sent the body of the deceased-V3 for post-mortem. After completion of post-mortem, he handed over the body to her relatives and sent viscera for examination through Court. He also sent the empty container seized from the place of occurrence for chemical examination. Suicide letter written by V1 was also seized. He got the chemical report and collected the foetus of the deceased V1 and sent it for DNA test through Court and got the DNA report Ex.P.35. On 15.04.2012, he arrested



the accused and recorded a confession statement. He also sent the accused for conducting potency test through Court. Medical examination, post-mortem and scientific expert to conduct chemical examination and got the relevant reports and completed investigation. After the case was taken on file and after completing the legal mandates, the Court framed charges for the offence under Sections 363, 366(a), 376 and 306 (3counts) IPC.

5. Heard the learned counsel for the appellant and the learned Government Advocate(Crl.side) for the State.

6. The learned counsel for the appellant submitted that the evidence of the prosecution does not prove the guilt of the accused under Section 306 IPC. He further submitted that the DNA test report Ex.P35 would show that the uterus sent for chemical examination did not contain the foetus and hence DNA test could not be carried out. By taking support from the above report, the learned counsel for the appellant claimed that the guilt of the accused under Section 306 IPC is not proved by the prosecution.

7. The learned Government Advocate (Crl.Side) for the State submitted that the accused had ravished V1 and thereafter refused to admit his involvement. Because of shame and frustration caused by the accused, the mother of V1 has taken the extreme decision of killing herself and her children; the above series of events was followed by the offence of rape and that itself would confirm that the occurrence of rape is proved. He further submitted that because of the act of the appellant, the victims were forced to commit suicide and the same has been clearly discussed by the Courts below by appreciating the evidence in a proper manner. Hence the appeal has to be dismissed.

8. Points for consideration:

"Whether the sentence and judgment of the trial Judge is unfair, improper or not legal?"

9. Despite the fact that the accused was charged for the offence under Section 376 and 306 (3 counts) IPC, the learned trial Judge has chosen to acquit the accused from the charges 366(A) and 323 IPC. The accused was only convicted for the offence under Sections 376 and 306 (3 counts) IPC. It is



very pathetic that a mother and children have consumed poison and committed suicide. V2 administered poison to her daughters V1 and V3 and thereafter she also consumed poison. All the three victim died one by one and the container containing poison was also recovered from the place of occurrence. The chemical examination of the said container and the tumbler used to consume the poison by the victim had deducted Monocrotophos in the washings of the tumbler, which is a poisonous substance. The report of PW.23 on this aspect is marked as Ex.P19 and it reads as under:-

"Item I: A small stainless steel tumbler with brownish stains inside and with pungent odour.

Deducted Monocrotophos in the washings of the tumbler.

Item II: A small stainless steel tumbler with brownish stains insider and with pungent odour.

Deducted Monocrotophos in the washings of the tumbler.

Item III: A small stainless steel tumbler with brownish stains insider and with pungent odour.

Deducted Monocrotophos in the washings of the tumbler.

Item IV: A plastic container (with screw type lid) with printed letters, "MONOKEM MONOCHROTOPHOS 36% SL with dirty brown stains inside and with pungent odour.

Deducted Monocrotophos in the washings of the container."

10. Though the cause of death of the deceased victim was proved to be consumption of above poison, I am not able to find any evidence to show whether the accused had directly induced or abetted the deceased victim to consume poison. In order to convict the accused for abetting suicide the following ingredients should be proved. In this context, it is relevant to refer the decision of the Allahabad High Court rendered in Anand Singh And Others Vs. State Of U.P. And Others, which reads as under:



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"7. The essential ingredients of the offence under Section 306 IPC are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC."

61. Similarly, in another recent judgment of this Court in Ude Singh v. State of Haryana, a two judge Bench of this Court, speaking through Justice Dinesh Maheshwari, expounded on the ingredients of Section 306 of the IPC, and the factors to be considered in determining whether a case falls within the ken of the aforesaid provision, in the following terms:

"38. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not,



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could only be gathered from the facts and circumstances of each case.

39. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."



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62. Similarly, in *Rajesh v. State of Haryana*, a two judge Bench of this Court, speaking through Justice L. Nageswara Rao, held as follows:

"9. 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."

63. In a recent decision of this Court in *Gurcharan Singh v. State of Punjab*, a three judge Bench of this Court, speaking through Justice Hrishikesh Roy, held thus:

"15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased."

64. In *Vaijnath Kondiba Khandke v. State of Maharashtra*, a two judge Bench of this Court, speaking through Justice U.U. Lalit, dealt with an appeal against the rejection of an application under Section 482 of the CrPC, for quashing an FIR registered under Sections 306 and 506 read with Section 34 of the IPC. A person serving in the



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office of the Deputy Director of Education Aurangabad had committed suicide on 8 August 2017. His wife made a complaint to the police that her husband was suffering from mental torture as his superiors were getting heavy work done from her husband. This resulted in him having to work from 10 AM to 10 PM and even at odd hours and on holidays. The specific allegation against the appellant was that he had stopped the deceased's salary for one month and was threatening the deceased that his increment would be stopped. This Court noted that there was no suicide note, and the only material on record was in the form of assertions made by the deceased's wife in her report to the police. The Court went on to hold that the facts on record were inadequate and insufficient to bring home the charge of abetment of suicide under Section 306 of the IPC. The mere factum of work being assigned by the appellant to the deceased, or the stoppage of salary for a month, was not enough to prove criminal intent or guilty mind. Consequently, proceedings against the appellant were quashed."

.....

26. The next judgment cited by the counsel for the Opposite Party No. 2 is in the case of Chitresh Kumar Chopda (supra) wherein the Supreme Court with respect to scope of [Section 107 IPC](#) elaborated and discussed the phrase 'instigate' and after referring to the various judgments and after referring to the suicide note held that, on the basis of the material on record, it cannot be said that any inference of the appellant having instigated were expected. The Supreme Court recorded as under:

25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value,



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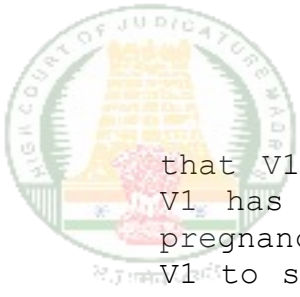
disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* [(1990) 4 SCC 76 : 1991 SCC (Cri) 47].)

27. In the present case, even if submissions of are taken on their face value to be gospel truth, there is nothing material or ground for even for presuming that the applicants could be held guilty for committing the offence under Section 306 IPC."

11. In this case, even though the victims got aggrieved due to denial of the involvement of the accused in ravishing V1, there is no evidence on record to show that the accused had directly abetted the suicide of the mother of V1 [V2] and V2 alone gave poison to her daughters V1 and V3.

12. Regarding the charges under Section 376 IPC, it is claimed by the learned counsel for the appellant that in view of the absence of foetus in the uterus sent for chemical examination, DNA test could not be conducted and hence the accused has benefit of doubt.

13. One important piece of evidence in this case is the evidence of Dr.A.S.Arun, who examined V1 before her death. He has been examined as PW.11. His evidence would reveal that on 02.04.2012 at 10.00 a.m., the deceased V1 was brought by her Aunt PW.3 [Kalpana] by reporting that the V1 did not get her mensuration for three months. When the doctor examined, he found



that V1 was pregnant. The Aunt [Kalpana], who accompanied with V1 has been examined as PW.3. After coming to know about the pregnancy of V1, PW.3 tried to handle the issue softly. She sent V1 to school and told the parents of V1 about the test results. On hearing that V2 -mother of V1 got very emotional and upset. After V1 came back from school, she enquired V1 in the presence of PW.3. At that time, the deceased V1 told that it was the accused who was the reason for her pregnancy. In her evidence PW.3 has spoken about the events that had happened subsequent to the revelation made by her and V1. It is stated that the mother of V1 was very much disturbed and she was crying all along. Since the mother of V1 was not able to handle the issue legally and practically, she got very much disturbed. She asked about this to the accused also. Since the accused refused his involvement, V1 and her mother became helpless. The act of the accused would show that he had cheated V1 in the pretext of love.

14. Further, the extreme choice chosen by V2 to kill herself and her daughters subsequent to the denial of the accused would show that, the accused brought troubles to the family of V1. The evidence of PW.3 would substantiate the events that had taken place prior to the act of suicide committed by V2. After PW.3 left her house, she heard a strange noise from the house of V2 and immediately she rushed to the house. Since the house was locked, she kicked and opened it and found that V1 and V2 had consumed poison. This has been witnessed not only by PW.3 but also by the neighbours who were residing nearby. PW.4 to PW.6, who were the neighbours of the deceased have also corroborated the evidence of PW.3. All these witnesses were aware of the involvement of the accused in ravishing V1. Even if the DNA report is not available, the above evidence would clearly show that the accused had ravished the victim and thereafter left V1 helpless. The medical examination conducted by PW.11 on V1 would also show that she was pregnant.

15. The learned trial Judge had adverted this material evidence available on record and found that the accused is guilty for the offence under Section 376 IPC. The deceased V1 is a minor whose consent is immaterial. One crucial material that has been recovered from the house of V1 is the suicide note. In which V1 has written suicide note, which was marked as M.O.4. The learned trial Judge has reiterated its content as below:

“என்னை சிலம்பரசன் என்ற ஒரு பையன் காதலித்து கல்யாணம்
பன்னிகிறேன் என்று சொல்லி என்னை கற்பழித்து எனக்கு துரோகம் செய்து



விட்டான். அதனால் என் குடும்பமே அளிந்து விட்டது என் குடும்பம் இறந்ததுக்கு அவன் தான் காரணம் அவன் குடும்பம் தான் காரணம்.”

16. The family of the victim is very peaceful and normal as others. There is no materials on record to show that the family of the deceased had any other problem to take the extreme decision of killing themselves. The medical evidence, the suicide note written by V1 and other evidences available on record would show that the family peace of V1 was shattered after she became pregnant due to the rape committed on her by the accused. The hand writing expert examined the hand writing of the suicide note and other hand writing of the V1 (Ex.P33) and confirmed that the hand writing and suicide note were written by V1 only. Since the said note was written by V1 soon before her death, it is her dying declaration.

17. Further the deceased V1 or her family did not have any motive to falsely point out the accused that he was the reason for making V1 pregnant.

18. It is submitted by the learned counsel for the defence that PW.1 have a previous enmity with the appellant and complaint was a motivated one. This is the case in which three human lives were lost. The mother of V1 was in extreme frustration when the accused disowned his acts which caused the pregnancy of V1. She was frustrated to the extent of taking away her life and the lives of her children. The scientific evidence and medical evidence and the suicide notes of the deceased are sufficient circumstantial evidence, which would directly and conclusively connect the accused to the offence of rape committed by him on V1. The learned trial Judge appreciated these materials carefully and found the accused guilty for the offence under Section 376 IPC.

19. Hence, I find no reason to interfere with the findings of the learned trial Judge with regard to the offence of rape under Section 376 IPC.

20. This is not the case of the prosecution that at the time of the occurrence of suicide, the deceased was present at the house of the accused and did any positive act for facilitating the victims to commit suicide.



21. In the result, this Criminal Appeal is partly allowed. The judgment of the Mahila Court, Dharmapuri, dated 09.10.2015 passed in S.C.No.29 of 2014 is modified to the effect that the accused was found guilty for offence under Section 376 IPC alone and stands convicted. The accused is acquitted from the offence under Section 306(3 counts) IPC. Consequently, the connected criminal miscellaneous petition is also dismissed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

- 1.The Sessions Judge, FTC, Mahila Court,
Dharmapuri.
- 2.The Inspector of Police,
Morappur Police Station,
Dharmapuri District.
- 3.The Judicial Magistrate,
Harur.
- 4.The Chief Judicial Magistrate,
Dharmapuri.
- 5.The Superintendent,
Central Prison, Vellore.
- 6.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.K.Murugesan, Advocate Sr.66247

Crl.A.No.707 of 2015
and Crl.M.P.No.6619 of 2019

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srg 27/01/2022