



## BAIL SLIP

The Appellant/Accused Namely, Devaraj (Age 32) S/o.Nataraj was directed to be released on bail by the order of this court dated 17.02.2015 and made in Crl.MP.No.1/2015 in Crl.A.No.93 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
Dated : 01.12.2021

CORAM :

THE HONOURABLE MS. JUSTICE. R.N.MANJULA  
Crl.A.No.93 of 2015

Devaraj .. Appellant/Accused 1

Vs.

State rep by  
Inspector of Police,  
Madathukulam Police Station,  
Tirupur.  
(Crime No.1020/2011)

.. Respondent/Complainant

PRAYER : Criminal Appeal has been filed under sections 374(2) of Criminal Procedure Code to set aside the judgment of the learned Magalir Needhimandram, Tiruppur in S.C.No.18 of 2012 dated 13.05.2014.

For appellant : Mr.Durai Kannan  
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 Magalir Needhimandram, Tiruppur in S.C.No.18 of 2012 dated 13.05.2014.

2. The short facts which led to the case of the prosecution is as under:-

The deceased-Ranjitha is the daughter of PW.1-Thilagavathi, who is the defacto complainant herein. PW.1 had initially agreed to give her daughter in marriage to the 1<sup>st</sup> accused; since the 1<sup>st</sup> accused was in the habit of drinking alcohol and lying on the road, the deceased did not want to marry him and complained about his attitude to her mother-PW.1. Since the deceased was not willing to marry the 1<sup>st</sup> accused, the marriage proposal was stopped. Thereafter, PW.1 was seeking some other alliance for the deceased Ranjitha. The 1<sup>st</sup> accused came to know about these arrangements. On 03.10.2011 at about 6.00 a.m., when the deceased Ranjitha went



to buy milk, the 1<sup>st</sup> accused along with his friend -2<sup>nd</sup> accused, abused the deceased in filthy language and threatened her that if she dared to marry anyone other than him, he would not allow her to live. The deceased got scared and felt humiliated. Unable to face the humiliation at the hands of the accused, the deceased took the extreme step of committing suicide. On 06.10.2011 at about 11.00 a.m., Ranjitha consumed cow-dung powder and committed suicide; since the accused had abetted the suicide of the deceased by their previous day conduct, they have been charged for the offence under Section 306 IPC.

3. On the complaint given by PW.1 on 07.10.2011, FIR was registered in Crime No.1020 of 2011 of Madathukulam Police Station under Section 306 IPC., by PW.8/Sub Inspector of Police. PW.9-Investigating Officer took up the case for investigation went to the place of occurrence and prepared rough sketch and Observation Mahazer. He also conducted inquest on the body of the deceased and prepared the inquest report. Thereafter, he sent the body for post-mortem; after post-mortem was conducted, he examined the doctor and had got the post-mortem report. After examination of the witnesses and after collecting the relevant materials, he filed the charge sheet against the accused 1 and 2 for the offence under Section 306 IPC.

4. The case was taken on file by the learned Judicial Magistrate No.II, Udumalpet in P.R.C.No.7/2012. After complying the legal mandates, the case was committed to the learned Principal District Judge, Tiruppur. From there, it was assigned to the file of Mahalir Neethimandram, Tiruppur. After complying the legal mandates, the Sessions Judge, Mahalir Neethimandram, framed charges against the accused 1 and 2 for the offence under Section 306 IPC and questioned them. Since the accused denied the charges, trial was conducted.

5. On the side of the prosecution, 9 witnesses were examined as PWs.1 to 9 and 9 documents were marked as Exs.P1 to P9. On the side of the defence, no witnesses were examined and one document was marked as Ex.D1.

6. After the conclusion of the trial and on considering the evidence on record, the learned trial Judge found the 1<sup>st</sup> accused guilty for the offence under Section 306 IPC, convicted and sentenced him to undergo 5 years Rigorous Imprisonment and imposed a fine of Rs.10,000/-; in default to undergo 6 months Simple Imprisonment. The trial Judge found the 2<sup>nd</sup> accused not guilty for the offence under Section 306 IPC and acquitted him. Aggrieved over that, the 1<sup>st</sup> accused had filed the present Criminal Appeal.

7. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the State.



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8. The learned counsel for the appellant submitted that the 1<sup>st</sup> accused is in no way connected to the death of the deceased; the allegations made by PW.1 is totally false; the deceased was all along willing to marry him, but she was upset because PW.1 made arrangements to marry her to some other person; the witnesses are all interested witnesses and the learned trial Judge has not appreciated the evidence in proper perspective and wrongly convicted the accused under Section 306 IPC.

9. The learned Government Advocate (Crl.Side) appearing for the State submitted that the occurrence was witnessed by the witnesses PW.4 and PW.5 and they have also given evidence as to what had happened on 05.10.2011; since the deceased got humiliated, she was in a stressful state of mind and took the extreme decision of killing herself by consuming cow-dung powder; the deceased/accused was instrumental and he had induced the deceased to commit suicide; the fact that the deceased is the daughter of PW.1 and whose marriage proposal with the accused was first accepted by the deceased family and later withdrawn was not denied; the marriage was dropped due to the rude behaviour of the 1<sup>st</sup> accused and his addiction to alcohol; since the deceased revealed her unwillingness to marry 1<sup>st</sup> accused, the marriage arrangements was stopped; thereafter, PW.1 started to arrange some other alliance for the deceased.

10. The learned counsel for the appellant submitted that the deceased was all along willing to marry the 1<sup>st</sup> accused and only because her mother/PW.1 started to find some other alliance to her, she got disturbed and committed suicide; on the side of the defence Ex.D.1 receipt for booking marriage hall dated 30.06.2011 was produced to show that the marriage hall was also booked for the marriage between the 1<sup>st</sup> accused and the deceased, but the marriage is said to have been fixed only in the month of October 2011.

11. Point for Consideration:

"Whether confirming the guilt and conviction of the accused of the lower Appellate Court is unfair, improper or not legal?"

12. The case of PW.1 is that despite the marriage arrangements were in progress, it was stopped due to the bad habits of the accused; PW.1 has stated in her evidence about the initial marriage arrangements for the deceased with the accused and thereafter, stopped it; she has also stated about the occurrence that had happened on 05.10.2011; when the deceased went to buy milk, she has stated about the manner in which she was abused and threatened by the accused; the evidence of PW.1 would also reveal that after returning home, the deceased seemed disturbed and frequently cried. She has stated that the deceased was lamenting that she was the reason for all the shame she brought to PW.1. On the next morning, she consumed cow dung powder and committed suicide.



13. In the cross examination of PW.1, she did not rebut what she had stated in her chief examination. PW.2 , PW.3 and PW.4 were examined as eye witnesses. On 05.10.2011, the deceased had been to the house of PW.3 Karpagam in order to buy fresh milk. So in all probabilities, PW.3 Karpagam and her family members PW.2 and PW.4 could have witnessed the occurrence that had happened on 05.10.2011 near their house.

14. The learned counsel for the appellant/accused has stated that the road in front of Ramamoorthy's house is the place, where the occurrence had taken place. The same was even clarified by PW.9/the Investigating Officer that the accused had threatened and abused the deceased on 05.10.2011 on that particular place and the house of Ramamoorthy is adjacent to the house of Rajesh Kannan. Hence there is no difficulty in assuming that the occurrence was witnessed by PW.2 to PW.4 as stated above.

15. The evidence of PW.2 to PW.4 are cogent, consistent and it convinces the Court to the fact that on the previous day (05.10.2011), when the deceased came there to buy milk, the 1<sup>st</sup> accused abused her by threatening that she should not marry anyone and that he would even kill her. PW.3 had called the mother of the deceased and informed her to come and take back her daughter, who was in a difficult situation. It is quite natural that any well known or well wisher of the family of the deceased would tend to call the mother of the deceased to safeguard her in that extraneous situation.

16. Though the materials on record would prove that the 1<sup>st</sup> accused had intercepted the deceased on 05.10.2011 and threatened and abused her in filthy language, that alone cannot be taken as the act of abetment and inducement given to the deceased to commit suicide. The act of the accused would have caused shame and humiliation. But in order to convict the accused for the offence under Section 306 IPC, the acts of the accused should be of such a serious nature that the deceased could have no other option except to kill herself. After the occurrence that happened on 05.10.2011, the deceased came back to her house and she was consoled by her mother. The deceased was not under any compulsion that she should choose the one and only option to kill herself. She was neither compelled by the accused that she should die by choosing any one of the cruel options for suicide. She could have made a complaint against the accused for harassing her or sought the help of her parents to deal with the accused. It seems that the deceased was not able to withstand the pressures given by the accused and opted to commit suicide.

17. As it has been stated already, some direct or indirect incitement to commit suicide should be proved in order to convict the accused for the abetment of suicide. Even when the 1<sup>st</sup> accused abused the deceased and caused threat



to her, he did not tell her that she should commit suicide or die.

18. The learned counsel for the appellant invited the attention of this Court to the latest judgment of the Supreme Court rendered in Anand Singh And Others vs State Of U.P. And Others reported in MANU/SC/0659/2021. In the said judgment reference was made to the earlier judgment of the Hon'ble Supreme Court rendered in Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi) reported in MANU/SC/1453/2009 and held as under:

"57. Dealing with the provisions of Section 306 of the IPC and the meaning of abetment within the meaning of Section 107, the Court observed:

"12. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note."

58. The Court noted that the suicide note expressed a state of anguish of the deceased and "cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide". Reversing the judgment of the High Court, the petition under Section 482 was allowed and the FIR was quashed.

59. In a concurring judgment delivered by one of us (Dhananjaya Y. Chandrachud J) in the decision of the Constitution Bench in Common Cause (supra), the provisions of Section 107 were explained with the following observations:

"458. For abetting an offence, the person abetting must have intentionally aided the commission of the crime. Abetment requires an instigation to commit or intentionally aiding the commission of a crime. It



60. More recently in *M Arjunan v. State* (represented by its Inspector of Police), a two judge Bench of this Court, speaking through Justice R. Banumathi, elucidated the essential ingredients of the offence under Section 306 of the IPC in the following observations:

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



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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, 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



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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."

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."

19. In this case, there is no direct incitement made by the 1<sup>st</sup> accused in order to compel the deceased to commit suicide. All that had happened prior to the occurrence was that the accused had insulted the deceased on the previous day in public view. The evidence available on record would prove that the 1<sup>st</sup> accused, with his conduct had harassed the



deceased and committed an offence under Section 4 of Tamil Nadu Women Harassment Act.

Section 2(a) of the Tamil Nadu Women Harassment Act, defines 'harassment' as under:

"2.Definitions:- In this Act, unless the context otherwise requires-

(a) "harassment" means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force."

20. The manner in which the 1<sup>st</sup> accused had threatened and abused the deceased would have certainly caused fear, shame and embarrassment. So the accused ought to have been punished for the offence committed under Section 2(a) of Tamil Nadu Women Harassment Act instead of abetment of suicide. The learned Sessions Judge, without applying the position of law properly found the accused guilty for the offence under Section 306 IPC. And hence, I feel the judgment deserves to be interfered and modified .

21. In the result, the Criminal Appeal is partly allowed and the judgment of the learned Sessions Judge, Magalir Needhimandram, Tiruppur in S.C.No.18 of 2012 dated 13.05.2014 is modified and the 1<sup>st</sup> accused is found guilty for a lesser offence under Section 4 of Tamil Nadu Women Harassment Act and convicted and sentenced to undergo One year Simple Imprisonment and imposed with a fine of Rs.10,000/-; in default to undergo further period of three months of Simple Imprisonment. The learned trial Judge is directed to issue Non-Bailable Warrant for securing the accused and send him to prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Judge, Mahalir Needhimandram, Tiruppur.

2.The Judicial Magistrate II, Udumalpet



3.Do through the Chief Judicial Magistrate, Tiruppur.(For information)

4.The Superintendent,Central Prison,Coimbatore.

5.The Inspector of Police,  
Madathukulam Police Station,  
Tirupur.

6.The Public Prosecutor,  
High Court, Madras.

Copy to:  
The Section Officer,  
Criminal Section,  
High Court,Madras

Cr1.A.No.93 of 2015

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A.SK(04.02.2022)