



BAIL SLIP

The Appellant / Accused namely Karthikeyan, S/o. Periyasamy was directed to be released on bail by the Order of this Court dated 16.08.2017 and made in Crl.M.P.No.12234 of 2016 in Crl.A.No.776 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.A.NO.776 OF 2016

AND

CRL.MP.NO.7334 OF 2021

Karthikeyan

...Appellant / Accused

Vs.

State represented by
The Inspector of Police,
A.Pallipatty Police Station,
Dharmapuri District.
(Crime No.26/2012)

...Respondent / Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed on the appellant/accused in S.C.No.30 of 2015, dated 01.03.2016 passed by the Sessions Judge, Fast Track Mahila Court, Dharmapuri District.

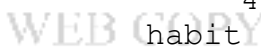
For Petitioner : Mr.S.Vijaya Kumar

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

JUDGEMENT

This Criminal Appeal has been preferred challenging the judgement of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri District, dated 01.03.2016 in S.C.No.30 of 2015.

2. The appellant is the accused before the trial Court.



4. The case of the prosecution is that the accused was in a habit of demanding the dowry and also caused cruelty to her by having illegal intimacy with his own step-mother. Having got frustrated because of such ill-treatment, the deceased on 07.12.2011 at about 8.30 am committed suicide by hanging herself at the house of the accused. On the complaint given by the father of the deceased (P.W.1), a case was registered by P.W.12 - Gandharuban in Crime No.26 of 2012 under Section 174 Cr.P.C.

5. On perusal of the records and on being satisfied with the materials available before the learned Sessions Judge, a charge was framed against the accused under Section 306 IPC. When the accused was questioned, he pleaded innocence and claimed to be tried and hence, the trial was conducted.

7. After concluding the trial on consideration of the materials available on record, the learned trial Judge found the accused guilty for the offence under Section 306 IPC and convicted and sentenced him to undergo 7 years Rigorous Imprisonment and imposed a fine of Rs.1,000/- in default to



undergo 3 months Rigorous Imprisonment. Aggrieved over the said judgement, the accused has preferred this present appeal.

8. Heard the learned counsel for the appellant/accused and the learned Government Advocate appearing for the respondent State.

9. The learned counsel for the appellant submitted that there is no nexus between the commission of suicide by the deceased and any of the acts of the appellant. In order to prove the offence under Section 306 IPC, the RDO report should show that the deceased was not subjected to any marital cruelty. The prosecution has not proved that it was the accused who abetted the deceased to commit suicide and hence, it is wrong on the part of the trial Judge to find the accused guilty for the offence under Section 306 IPC and convict him. He also relied on the decision of the Hon'ble Supreme Court in the case of 'Gurucharan Singh Vs. State of Punjab' reported in '2017 (1) MWN (Cr.) 18 SC' in support of his contention that unless there is any intentional involvement of the accused in aiding or instigating the deceased to commit suicide, the offence under Section 306 IPC cannot be taken as proof.

10. The learned Government Advocate appearing for the respondent State submitted that the evidence on record would show that the accused had illegal intimacy with his step-mother and ill-treated the deceased in various manner. So it is this act of the accused which had instigated the deceased to commit suicide and hence, it is right for the learned trial Judge to find the accused guilty for the offence under Section 306 IPC and hence, the appeal has to be dismissed.

11. Points for consideration:-

Whether the conviction and sentence of the accused for the offence under Section 306 IPC by the learned Sessions Judge, Fast Track Mahila Court, based on the materials available on record is fair and proper?

12. The relationship between the deceased and the appellant was not in dispute; the marriage between the deceased and the accused had taken place on 15.09.2011. According to the case of the prosecution, the accused had illegal intimacy with his step-mother; he humiliated and also ill-treated the deceased. Unable to withstand the ill-treatment, the deceased committed suicide by hanging without being able to withstand the deviant acts of the accused. The occurrence had taken place on 07.12.2011 at about 08.30 am at the house of the accused.

12.1 The complainant, who is father of the deceased was examined as P.W.1.; he has stated in his evidence that in view



of the alleged legal intimacy between the appellant and his step-mother, the couples used to quarrel with each other; on the previous day of the occurrence, the deceased had been to her relatives house by getting permission from her mother-in-law; the accused beat the deceased by stating that she did not get his permission before going to her relatives' house and thereafter, the elders interfered and pacified the deceased and sent her back to her maternal home; on 07.02.2012 also, the deceased informed her father that there was a quarrel between herself and the accused; it is stated by P.W.1 that the deceased herself left the matrimonial house and came to her father's house; P.W.1 instructed her to take a particular bus and he would pick her from the bus stand; when he was waiting for the bus, the bus came but the deceased did not come in the bus; after the bus had gone, he got a phone call from someone and came to know that the deceased had committed suicide.

13. The mother of the deceased who was examined as P.W.2, has not given any details about the alleged previous day quarrel between the deceased and the appellant. Apart from P.W.1 and P.W.2, the rest of the witnesses also came to know about the death of the deceased. Their evidence did not speak about any event that had occurred soon before the death of the deceased.

14. As per Section 113A of the Indian Evidence Act, if a woman has committed suicide within a period of 7 years of her marriage, the Court may presume that the suicide was abetted by her husband or any of the relatives of the husband. However, this presumption has to be taken having regard to all other circumstances of the case. For the sake of clarity, the provision under Section 113A of the Indian Evidence Act, is extracted as under:-

"113A. Presumption as to abetment of suicide by a married woman. --When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

15. Though the occurrence had taken place within 7 years of marriage, the inquest report submitted by P.W.15 - RDO through Ex.P7 would reveal that the deceased was not subjected to any dowry harassment. It is not in dispute that the deceased had committed suicide by hanging and the post-mortem report Ex.P2 issued by P.W.10 - Doctor would also show the same. Excepting



P.W.1 and P.W.2, who are the parents of the deceased, P.W.3 (cousin of P.W.1) and P.W.4 (brother's son of P.W.1), other witnesses have also stated about the alleged cruelty and harassment caused by the appellant to the deceased.

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16. The mother of the deceased - P.W.2, has not stated that it was the accused who abetted the suicide of the daughter. But she has stated in her evidence that the appellant had murdered her daughter after demanding dowry.

17. Since the death of the deceased was found to be due to suicide, the evidence of P.W.2 appears to be an exaggerated one. PW.3 & P.W.4 are hearsay witnesses, who have just heard about the news of the suicide committed by the deceased. In order to prove the guilt of the accused, for the offence abetting suicide, the factum of abetment should be proved. As per Section 107 I.P.C, the abetment is defined as below:

"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."

18. But in the case in hand, the prosecution did not establish whether the accused was present at the place of occurrence at the relevant point of time. Though it is stated that because of the repeated misunderstandings and quarrels between the couples specially due to some deviant behaviour of the appellant the deceased had committed suicide, no nexus between her act of committing suicide and the alleged harassment or ill-treatment caused to the deceased is proved.

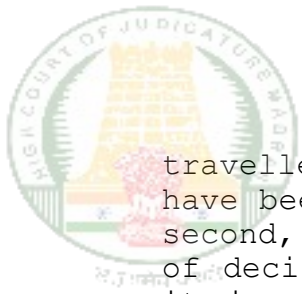
19. In the judgement of the Hon'ble Supreme Court rendered in 'Gurucharan Singh Vs. State of Punjab' reported in '2017 (1) MWN (Cr.) 18 SC', it is held that, in order to convict the accused for the offence of abetment, the abetment should be proved in such a manner that the appellant had the intention and involvement to aid and instigate the victim to commit suicide. None of the prosecution witnesses have stated that it was the accused who forced the deceased to commit suicide. It was neither proved that the deceased had committed suicide due to compelling circumstances where she found no other way to live except to commit suicide. In the above judgement, it is held as under:-

".....



Section 107 IPC defines abetment and is extracted hereunder: "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 doing. Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

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travelled in the bus and got down at the bus stop, she could have been taken by the father to his home. But in a fraction of second, she has chosen a decision to end her life. Such a change of decision taken by the deceased is an emotional one. Even if it is presumed that the accused had uttered words by which he had asked the deceased to commit suicide, that alone will not attract the offence under Section 306 IPC. In order to attract the offence under Section 306 IPC, there should be direct nexus between the act of the accused and the commission of suicide and the accused ought to have directly instigated and aided the deceased to commit suicide.

21. It is not the case of the prosecution that the appellant had directly involved in making the deceased to commit suicide. In the absence of such proof, it is wrong on the part of the learned Sessions Judge, to record a finding that the accused is guilty for the offence under Section 306 IPC. Since the prosecution has not proved that the accused had abetted and aided the deceased to commit suicide, the judgement of the learned trial Judge is liable to be set aside.

In the result, this Criminal Appeal is allowed and the judgement of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri District, dated 01.03.2016 in S.C.No.30 of 2015 is set aside. The fine amount already paid by the accused shall be refunded. Connected Criminal Miscellaneous Petition is closed.

Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri District.
- 2.The Judicial Magistrate,
Pappireddipatti.
- 3.The Chief Judicial Magistrate,
Dharmapuri (For Information)
- 4.The Superintendent,
Central Prison, Vellore.



5.The Inspector of Police,
A.Pallipatty Police Station,
Dharmapuri District.

6.The Public Prosecutor,
High Court, Madras.

7.The Superintendent of Police,
Dharmapuri District.

8.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.S.Vijayakumar, Advocate Sr.No.66906

Crl.A.No.776 of 2016

PL(CO)
RVM(02/03/2022)