

Bail Slip

The Appellant/Accused Namely G.Karthikeyan, S/o Govindasamy was directed to be released on bail as per order of this Court dated 18/12/2014 made in M.P.No.1/14 in Crl.A.No.609 of 2014.

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on : 21.12.2020

Pronounced on : 08.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.609 of 2014

G.Karthikeyan,
S/o.Govindasamy ... Appellant / Sole Accused

versus

State Represented by,
Inspector of Police,
Kavunthapadi Police Station,
Erode District. ... Respondent /Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned Sessions Judge (Mahalir Fast Track Court), Erode dated 17.11.2014 in S.C.No.61 of 2014.

For Appellant : Mr.A.Thiyagarajan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

J U D G M E N T

The present Criminal Appeal has been filed by the appellant to set aside the judgment of conviction and sentence dated 17.11.2014 passed in S.C.No.61 of 2014 by the learned Sessions Judge (Mahalir Fast Track Court), Erode.

2. The appellant herein is the sole accused in the above referred case. He stood charged for an offence under Section 306 of IPC. By judgment dated 17.11.2014, the learned Sessions Judge (Mahalir Fast Track Court), Erode, convicted the appellant under Section 306 of IPC and sentenced to undergo

Rigorous Imprisonment for ten (10) years and to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for one (1) year.

3. Challenging the said conviction and sentence, the accused is before this Court, by way of filing the present Criminal Appeal.

4. The case of the prosecution, in brief, is as follows;

4.1. P.W.1-Latha, is the mother of the deceased-Malathi. Before 4 years from the date of occurrence, after made promise that the accused would marry the deceased, the accused herein maintained a deep relationship with the victim girl. Further, during such time, the accused suppressed the fact that he is a married man. Before 6 months from the date of occurrence, the deceased-Malathi came to know that the accused is a married man. When the same was questioned by the deceased, the accused replied that the character of his wife was not up to his level and therefore, he was separated from her. Further, he told to the deceased that an application has also been filed for dissolution of the marriage. After representing as above before the deceased, the accused joined with his wife and lived together. When the deceased asked about the promise made by the accused, he told to the deceased that he was not ready to marry her. The said misunderstanding continued for a period of 3 months.

4.2. On 28.07.2013, at about 7.00p.m., the accused came to the house of the deceased. After seeing the accused, the deceased asked him to give answer for his life. In this regard, the accused told to the deceased that "நீ எக்கடோ கெட்டு போ, இனி நான் இந்த பக்கம் வரமாட்டேன், நீ செத்து போ, நீ செத்தாலும் பரவாயில்லை எனக்கு கவலையில்லை". After hearing the said reply, the deceased continuously cried like anything. Though the mother and sister of the deceased consoling her, she was not satisfied.

4.3. In the meantime, on 29.07.2013, at about 10.00a.m., the accused herein contacted the deceased through mobile phone. After made conversation with the accused, the deceased cried and lamented the accused. When the same was enquired by P.W.1, the deceased told to her that the accused instructed her as to go and die. After hearing the same, the mother of the deceased went to the shop, which was ran by her husband. In the meantime, after locking the door, the deceased by using the saree committed suicide. Thereafter, P.W.1, who is the mother of the deceased lodged a complaint before the Police under Ex.P.1.

4.4. P.W.9-Duraisamy, the then Special Sub Inspector of Police, Kavunthapadi Police Station, on 29.07.2013, at about 16.00 hours received a complaint from P.W.1 and registered F.I.R. in Crime No.293 of 2013 for the offence punishable under Section 306 of IPC. The printed First Information Report was marked as Ex.P.7. After registration of the F.I.R., he handed over the same to P.W.10 for investigation.

4.5. On receipt of the F.I.R., P.W.10-Sugavanam, the then Inspector of Police, Kavunthapadi Police Station, took up the same for investigation. On the same day, he visited the scene of occurrence and in the presence of P.W.8-Ramesh and one Manigandan, he prepared an Observation Mahazar under Ex.P.6. He drawn rough sketch and the same was marked as Ex.P.8. From the scene of occurrence, in the presence of the same witnesses, he seized two pieces of polyster saree under the cover of mahazar (Ex.P.5).

4.6. In continuation of investigation, P.W.10 examined the Panchayators and prepared an inquest report under Ex.P.9. He sent a requisition to the Hospital for conducting autopsy over the dead body of the deceased-Malathi.

4.7. On receipt of the requisition given by P.W.10, P.W.5-Dr.Rajendran, attached with Government Hospital, Gobichettipalayam, conducted autopsy over the dead body of the deceased-Malathi and found the following injuries;

"External injuries:

Ligature mark in front of neck (8cm x 2cm. Brownish red in color from left side of neck, extended upto right side, just lateral to midline. Erythematous skin over forehead, nose and left shoulder. No other external injuries. Right eye - reddish, blood shiner lateral part of eye. No discharge from nose, mouth, ear. Tongue inside the mouth. Opening of thorax. No ribs, lungs-congested. Hyoid bone preserved. Heart - 270 gm. chamber - blood, empty. Stomach contain 200ml partially digested food particles. No specific odour. Liver-1000g, congested, spleen - 120 g, congested. Each kidney - 200g, congested, Intestine -distended gas. Bladder empty."

4.8. He collected the samples, namely, hyoid bone, skin and tissue over neck from the dead body of the deceased and sent the same for chemical examination. In turn, P.W.4-Dr.Kavitha, examined the same and issued a report under Ex.P.2 stating that the blood vessels are all frozen. Therefore, P.W.5 issued a post mortem certificate under Ex.P.3 and has given a final opinion as the deceased would appear to have died of Asphyxia due to hanging.

4.9. After completion of the postmortem, P.W.10 examined the witnesses, namely, P.W.1-Latha, P.W.3-Abirami, P.W.2-Maheshkumar, Velayutham, P.W.6-Shanthakumari, P.W.7-Udayakumar, Manigandan, P.W.8-Ramesh and recorded their statements. Further, he collected the chains and others, which were worn by the deceased through Form 91. The recovered material objects are marked as follows;

M.O.1	சேலை
M.O.2	கவரிங்
M.O.3	பொலுசு ஒரு இணை
M.O.4	கவரிங் கம்மல்
M.O.5	அறுத்து எடுத்த டாப்
M.O.6	சுடிதார் பேண்ட்
M.O.7	சுடிதார் சால்வை
M.O.8	பிரா
M.O.9	ஜட்டி

4.10. Thereafter, P.W.10 examined the Doctor and recorded the statement. Finally, he came to the positive conclusion that the accused herein committed the offences under Sections 417, 495 and 306 of IPC and filed a final report accordingly.

5. Based on the above materials, the trial Court framed charges under Section 306 of IPC. The accused denied the same and opted for trial. In order to prove their case, on the side of the prosecution, as many as 10 witnesses were examined as P.W.1 to P.W.10 and 12 documents were exhibited as Exs.P.1 to P.12. Besides, 9 Material Objects, which were marked as M.O.1 to M.O.9.

6. Out of the said witnesses, P.W.1-Latha is the mother of the deceased. She speaks about the love affair had between the deceased and the accused. Further, she has stated that on 29.07.2013, after made conversation with the accused through mobile phone, the deceased cried and lamented the accused. Further, she has stated that when at the time she was in her another daughter's house, the deceased after closing the door committed suicide.

7. P.W.2-Maheshkumar, is the son-in-law of P.W.1. He speaks about the occurrence as during the relevant point of time, the deceased and the accused fell in love with each other.

When the same was questioned by him, the deceased told to him that the accused would marry her. One day before the occurrence, P.W.1 contacted him through mobile phone and told that the accused came to her house and refused to marry the deceased-Malathi. On the day of occurrence, at about 12.00noon, P.W.1 again came to the shop, which has been ran by P.W.2 and requested to pacify the deceased. In the meantime, information has been received by him that the deceased has closed the door and committed suicide.

8. P.W.3-Abirami, is the sister of the deceased. She speaks about the occurrence as during the relevant point of time, the deceased pressurized the accused for marrying her. In this regard, the accused made a reply as after the dissolution of his earlier marriage, he was ready to marry the deceased. On 29.07.2013, at about 11.00a.m., the accused telephonically contacted the deceased and made conversation, which was not known to P.W.3 and ultimately, the deceased started to cry and thereafter, when at the time she was in her shop, she received information as the deceased committed suicide by using the saree.

9. P.W.4-Dr.Kavitha, is the Assistant Professor, speaks about the examination of the skin, which was collected from the dead body of the deceased. According to her, the blood vessels found in the skin are frozen.

10. P.W.5-Dr.Rajendran, speaks about the details of the post mortem and about the opinion given to the Investigating Officer in respect to the cause of death.

11. P.W.6-Shanthakumari, is related to P.W.1. She deposed as after hearing the news, in respect to the death of the deceased, she went to the house of P.W.1.

12. P.W.7-Udhayakumar, is the uncle of the deceased. He speaks about the occurrence as on the day of occurrence, after hearing the hue and cry of P.W.1, he went upstairs and attempted to broke open the door for recovering the dead body.

13. P.W.8-Ramesh, is also a relative of P.W.1. He speaks about the preparation of observation mahazar, rough sketch and about the seizure of M.Os.

14. P.W.9-Duraisamy and P.W.10-Sugavanam are the Police Officers, who have stated about the receipt of the complaint, manner of investigation conducted and filing of Final Report.

15. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any documents on his side.

16. The learned Sessions Judge (Mahalir Fast Track Court), Erode, after perusing all the above materials and on considering the arguments advanced by either side, convicted and sentenced the appellant as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court with this appeal.

17. I have heard Mr.A.Thiyagarajan, learned counsel appearing for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State. I have also perused the records carefully.

18. The learned counsel appearing for the appellant would contend that the evidences given by the prosecution witnesses are having lot of contradictions. In respect to the occurrence, there are two set of evidences let in by the prosecution witnesses and the same itself is sufficient to hold that the entire case of the prosecution is false one. Further, he would contend that without producing the call details, making allegation against the accused as due to the telephonic call, the accused provoked the deceased for committing suicide, is false one. According to him, there is no direct evidence in respect to the abetment committed by the accused and therefore, the accused is not found guilty under Section 306 of IPC. Therefore, he prays for allowing this appeal and for setting aside the conviction rendered by the trial Court.

19. Per contra, the learned Additional Public Prosecutor appearing for the State would contend that though the prosecution has not produced the call details, in respect to the same, there was no denial on the side of the accused as there was no telephone call has been received by the deceased before the occurrence and therefore, the same has not been taken into account for considering the case of the appellant in his favour. According to him, only due to the provoke made by the accused, the deceased committed suicide and therefore, interference of this Court in the findings arrived at by the trial Court is not necessary.

20. I have considered the rival submissions made on either side and perused the records carefully.

21. It is true as per the evidences of P.W.1 and P.W.2, before the occurrence the deceased received a call through the

mobile phone from the accused. However, both P.W.1 and P.W.2 had fairly conceded that they are not known the conversation happened between the accused and the deceased. More than that, the prosecution has not recovered the call details in respect to the mobile phone having by the deceased.

22. In this regard, the learned counsel appearing for the appellant relying on the judgment of our Hon'ble Apex Court in the case of SATISH KUMAR vs. STATE OF HIMACHAL PRADESH reported in (2020) 7 SCC 637 wherein it has held as follows;

"20.The entire prosecution case is based upon the telephone call made by Satish Kumar but no call details have been produced to verify the correctness of the telephone call. As per the IO, there was no verification made in pursuance of the phone call received."

23. Further, our Hon'ble Apex Court by observing the same has come to the conclusion that the non production of the call details would falsify the case of prosecution. But here it is a case, during the time of cross examination before the prosecution witnesses, on the side of the accused nothing was suggested as there was no mobile call has been received by the deceased. The said circumstances shows that the accused impliedly admitted the case of prosecution in respect to the receiving of mobile call from the accused. Therefore, the said submission made by the learned counsel appearing for the appellant, is not having any much force by way of assailing the case of prosecution.

24. In respect to the another submission made by the learned counsel for the appellant, i.e. two set of evidences are available for proving the occurrence, it is to be noted that P.W.1 is the mother of the deceased and P.W.2 is the son-in-law of P.W.1, both of them had stated that before the occurrence both the accused and the deceased were fell in love with each other. On the other hand, P.W.3, who is the sister of the deceased and P.W.7, who is the uncle of the deceased, deposed before the trial Court as only the deceased had compelled the accused for marrying her.

25. In the said circumstances, since the charge under Section 306 of IPC has been framed against the accused, in respect to the love affair having by the deceased with the accused, though the evidences given by the prosecution witnesses are contradictory in nature, the same is unnecessary for deciding the issue raised in this appeal.

26. The only question which remains has to be decided in this appeal is whether at the time of occurrence, the accused

herein abetes the deceased for committing suicide or not. In otherwise, the factual scenario let in by the prosecution evidences is so that due to the refusal made by the accused for marrying the deceased, the alleged occurrence had happened. So, it is necessary to find out whether such thing committed by the accused is within the meaning of abetment. At this juncture, it is relevant and useful to see the judgment of this Court in SURESH vs. STATE BY INSPECTOR OF POLICE reported in 2014 (1) TLNJ 309 (Criminal), wherein it has viewed as follows;

"Even in the worst case of the deceased having made such a promise and having gone back from such promise, it cannot be termed as an act of abetment of committing suicide as it will not fit in any of the clauses of Section 107 of IIPC defining abetment."

27. Further, in a case of RAJESH vs. STATE OF HARYANA reported in 2019 (6) SCJ 231 wherein our Hon'ble Apex Court has observed as follows;

"8. Conviction under Section 306 Indian Penal Code 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 Indian Penal Code, 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 Indian Penal Code."

28. From the above catena of judgments, it was concluded by our Hon'ble Apex Court as well as by this Court for convicting the accused under Section 306 of IPC, the prosecution must initially shown the abetment committed by the accused. In respect to the definition of abetment, Section 107 of the Indian Penal Code reads as follows;

"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."

29. Therefore, for the purview of abetment, the accused must added, abetment or counseled or procured commission of principle offence. Further, abetment by instigation depends upon the intention of the person, who abetes and not upon the act, which is done by the person, who has abetted.

30. In the said situation, refuse to marry the deceased is not amounts to abetment for committing suicide. In this regard, in a case of GURCHARAN SINGH vs. THE STATE OF PUNJAB reported in AIR 2020 SC 4714 wherein our Hon'ble Apex Court has held as follows;

"18. In the case Mangat Ram v. State of Haryana MANU/SC/0238/2014 : (2014) 12 SCC 595, which again was a case of wife's unnatural death, speaking for the Division Bench, Justice K.S.P. Radhakrishnanan rightly observed as under:

24. We find it difficult to comprehend the reasoning of the High Court that "no prudent man is to commit suicide unless abetted to do so". A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning. "

31. As per the ratio laid down in the above referred judgment, it was concluded by our Hon'ble Apex Court as disappointment in life is not a thing, which constituted the abetment. Here it is a case, the prosecution has not proved the abetment committed by the accused within the meaning of Section 107 of IPC and therefore, without any evidence in respect to abetment, we cannot conclude that the findings arrived at by the trial Court is within four corners of law.

32. In the light of the said discussions stated supra, this Criminal Appeal is allowed. The conviction and sentence

imposed upon the appellant / accused by the learned Sessions Judge (Mahalir Fast Track Court), Erode dated 17.11.2014 in S.C.No.61 of 2014, for the offence under Section 306 of IPC is set aside.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge
(Mahalir Fast Track Court),
Erode.

2.The Inspector of Police,
Kavunthapadi Police Station,
Erode District.

3.The Public Prosecutor,
High Court, Madras.

4.The Judicial Magistrate No.2,
Gobichettipalayam.

5.The Chief Judicial Magistrate,
Erode, (For Information)

6.The Superintendent,
Central Jail, Coimbatore.

7.The Director General of Police,
Chennai-4.

8.The District Collector,
Chennai.

+1cc to M/s.A.Thiyagarajan, Advocate Sr.1272

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