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Crl.A.No.98 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.98 of 2018

Kabildev

...

Appellant

Vs

The State

Represented by

The Inspector of Police,

St.Thomas Mount Police Station,

Chennai.

Cr.No.232 of 2014

...

Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned Judge, Mahila Court, Chengalpattu in S.C.No.68 of 2015 dated 31.01.2018 and acquit him from all the charges.

For Appellant : Mr.K.Selvaraj

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

JUDGMENT

This Criminal Appeal is directed as against the Judgment passed in S.C.No.,68 of 2015 dated 31.01.2018 on the file of the Mahila Court,



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Chengalpattu, thereby convicted the appellant for the offence punishable under Section 306 of IPC.

2. The case of the prosecution is that the victim was working as constable in the Armed Force, Chennai. The accused was also working as constable in the same Armed Force. They were friends and fell in love with each other. The accused is already a married person and by suppressing the said fact, he induced the victim to love him and on the pretext of marriage, he had physical relationship with her. Due to which, she got pregnant. On knowing her pregnancy, the victim requested the accused to marry her. Thereafter, the accused disclosed that he is already a married person and he would not be able to marry her. Therefore, the victim suffered mental agony and said that she will commit suicide. Immediately, the accused said “go and die”. Therefore, she got mental depression and on 15.04.2014 at 8.30 p.m., she committed suicide by hanging in her residence. In the post mortem, it was found that she was pregnant by 15 to 16 weeks and the forensic report stated that the accused was the only reason for her pregnancy. Hence, the complaint.



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3. On receipt of the complaint, the respondent registered the FIR in Crime No.232 of 2014 for the offence punishable under Section 306 of IPC. After completion of the investigation, the respondent filed final report and the same has been taken cognizance by the Trial Court in S.C.No.68 of 2015 for the offence punishable under Section 306 of IPC.

4. In order to bring home the charges, the prosecution had examined P.Ws.1 to 17 and marked Exs.P1 to P19 and produced M.Os.1 and 2. On the side of the accused, no one was examined and no document was marked.

5. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty for the offence punishable under Section 306 of IPC and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.25,000/- in default to undergo six months simple imprisonment. Aggrieved by the same, the present appeal.

6. The learned counsel appearing for the appellant would submit that all the witnesses turned hostile and no witness supported the case of the



prosecution. Even then, the Trial Court convicted the appellant for the offence punishable under Section 306 of IPC. There was no contradiction of circumstantial evidence to prove that the appellant had suppressed his marriage to the deceased and he promised to marry her; on the pretext of marriage, he had sexual intercourse with her several times and refused to marry her, thereby he instigated her to commit suicide. There was absolutely no evidence to allege that the appellant instigated the victim to commit suicide soon before her death. No one had spoken about the overt act of the appellant. Only because he had love affair with the victim, which was not accepted by her parents, she committed suicide. The Trial Court came to the conclusion that the appellant is the biological father of the foetus of the deceased, by relying on the DNA report, which was marked as Ex.P9. According to the learned counsel, when there was no evidence of alleged second post mortem and collection of foetus and femur bone of the deceased, thus formula cannot be sustained.

7. He further submitted that even assuming that the appellant was the reason for the pregnancy, he cannot be convicted for the offence under Section 306 of IPC, since in order to prove the charge under Section 306 of IPC, 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. The Trial Court convicted the appellant only based on the statement recorded under Section 161 of Cr.P.C. The confession statement was recorded and attested by P.Ws.10 and 11 and the same was marked as Ex.P5. Both P.Ws.10 and 11 did not support the case of the prosecution and they turned hostile. Therefore, he prayed for acquittal.

8. Per contra, the learned Government Advocate (Criminal Side) submitted that though P.Ws.1 to 6 turned hostile, the DNA test clearly proved that the appellant is the biological father of the foetus of the deceased. The said report was marked as Ex.P9. Admittedly, the petitioner fell in love with the victim and they had physical relationship, due to which, she got pregnant. Later he refused to marry her and as such, due to mental agony she committed suicide. In fact, soon before her death, there was a conversation between both of them and thus, the accused abetted the deceased to commit suicide. Therefore, the Trial Court rightly convicted the appellant and he prayed for dismissal.



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9. Heard, Mr.K.Selvamani, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

10. The father of the victim was examined as P.W.1. The mother of the victim was examined as P.W.2. Her uncle was examined as P.W.3. Other constables, who were working along with the deceased and the appellant, were examined as P.Ws. 4 and 5. In the year 2013, the victim was working as a constable in the Armed Force. While being so, on 15.04.2014 at about 8.30 p.m., she committed suicide by hanging. It was informed to her sister through phone. She was living at Dindigul and she informed the same to P.W.3. P.W.3, who is the uncle of the deceased, was admitted in Balaji Hospital in Chennai. However, when he enquired, he was informed that the victim was brought dead and her body was taken to Chrompet Government Hospital for post mortem. After seeing the body of the deceased, P.W.1 lodged a complaint, which was marked as Ex.P10. The respondent initially registered the case under Section 174 of Cr.P.C and requested to conduct post mortem on the body of the deceased. The post mortem was conducted and it was reported that the deceased died due to respiration and congestion due to her hanging. She was



15 to 16 weeks pregnant. On suspicion, four person's DNA were collected to verify the reason for her pregnancy. As per the report, the DNA of the accused matched with the foetus of the deceased.

11. On perusal of the deposition of P.Ws.1 to 6 revealed that P.Ws.1 and 2 were taken to respondent police and however they were not allowed to see the victim. They were threatened by the respondent and their signatures were obtained. According to P.W.2, they were beaten up by the respondent to sign in the papers. Though, they deposed that the deceased was found with external injury, it was not corroborated by the post mortem report. Except P.Ws.12, 14, 15, 16 and 17 all the prosecution witnesses turned hostile. The Trial Court, only based on the deposition of the Investigation Officer, convicted the appellant. The Trial Court came to the conclusion that only on assumption and presumption, the appellant fell in love with the victim and by suppressing the fact that he was already married person ; he induced her to have physical relationship on the pretext of marriage, they had physical relationship several times, due to which, she got pregnant ; thereafter, the appellant refused to marry her and she got mental agony and she committed suicide. Even assuming that the Trial Court rightly assumed the question, whether there is any evidence



to show that the appellant abetted the victim to commit suicide soon before her death or not ?. In order to bring the charge for the offence under Section 306 of IPC, the abetment should be proved.

12. It is relevant to extract the provision under Section 107 of Cr.P.C., which reads as under “

“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 2 which has been inserted along with Section 107 reads as under “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 facilitates the commission thereof, is said to aid the doing of that act.”

13. In the case on hand, as per allegations projected by no stretch of imagination is could be said that the ingredients of abetment are attracted on the deposition. Merely on the basis of evidence of Investigation Officer, the Trial Court held that the allegation of harassment of the deceased is unsustainable in



law. Instigation is to goad, urge forward, provoke, incite or encourage to do '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. In the case on hand, there is no evidence to show that the appellant uttered any words against the deceased.

14. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Hon'ble Supreme Court of India is clear that in order to convict a person under Section 306 of IPC there has to be a clear mens rea to commit the offence. It is also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide. Unfortunately, the Trial Court, only on the presumption and assumption, without piece of evidence, mechanically convicted the appellant for the offence under Section



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15. In view of the above, the conviction and sentence passed by the Judge, Mahila Court, Chengalpattu in S.C.No.68 of 2015 dated 31.01.2018, is hereby set aside. Accordingly, this Criminal Appeal is allowed. The appellant/accused is acquitted of all charges in S.C No.68 of 2015 on the file of the Judge, Mahila Court, Chengalpattu, Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

04.11.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non Speaking order
Lpp

To

1. The Judge,
Mahila Court, Chengalpattu.
2. The Inspector of Police,
St.Thomas Mount Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madrs.

G.K.ILANTHIRAIYAN. J.



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