IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.221 of 2020

Saravanan .. Appellants

Vs

1. State rep. by
The Inspector of Police
K-1 Sembium Police Station
Chennai.
(Crime No.1932 of 2013) .. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of CRPC, to call for records and set aside the judgment and sentence passed in S.C.No.204 of 2016 dated 19.03.2020 on the file of the XVII Additional Sessions Judge, City Civil and Sessions Court, Chennai.

For the Appellant : Mr.N.R.Elango
Senior Counsel
for Mr.S.Sairaman

For the Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)

ORDER

On 18.10.2013, when ***P.W.12*** was on duty at the K-1 Puliyanthope Police Station, the statement given by ***P.W.1*** when she was admitted into hospital was brought, which contained allegations to the effect that ***P.W.1*** had borrowed a sum of Rs.5 lakhs from the accused and she was giving ten per cent interest per month and to give Rs.50,000/- interest per month, she had to borrow from outside, resulting in total loan outstanding mounting up to Rs.2 lakhs. Her son tried to get a loan from his company, but could not get a loan and therefore, all the three of them, that is, ***P.W.1***, her daughter and son, decided to commit suicide and after taking tablets, which was given to increase the blood pressure, and cut their blood veins in their hands with blade and attempted to suicide.

2. However, her daughter telephoned ***P.W.1***'s brother *Welington,* who rushed to their house with an ambulance and they were admitted to the Stanley Hospital. On the strength of the said allegation, a case under Section 309 of the Indian Penal Code was registered in Crime No.1932 of 2013. Subsequently, the ***P.W.1***'s son did not responded to the treatment and died on 20.10.2013. Thereafter, the case was altered into one under

Section 306 r/w Section 9 of the Tamil Nadu Prohibition of Exorbitant Interest Act, 2003. ***P.W.15***, completed the investigation and laid the final report proposing the accused guilty under Section 306 r/w Sections 4 and 9 of the Tamil Nadu Prohibition of Exorbitant Interest Act, 2003 and under Section 308 of the Indian Penal code. The case was taken on file of the learned V Metropolitan Magistrate, Egmore under Sections 306 and 308 (2 counts) and Section 4 and 9 of the Tamil Nadu Prohibition of Exorbitant Interest Act, 2003, in PRC.No.117 of 2015. After the appearance of the accused and furnishing of the copies as per Section 207 of the Code of Criminal Procedure, the accused was committed to the Principal Sessions Court, Chennai, upon which the case was taken in as S.C.No.204 of 2016 and thereafter, was made over to the learned XVII Additional Sessions Judge, Chennai.

3. Upon perusal of the records of the case and after hearing the parties, the Trial Court framed charges under Section 306 r/w 4 and 9 of the Tamil Nadu Prohibition of Exorbitant Interest Act, 2003 and under Section 308 of the Indian Penal Code. Upon being questioned, the accused denied the charges and stood trial. Thereafter, to bring home the charges,

the defacto complainant was examined as ***P.W.1***. The daughter of ***P.W.1***, who also attempted to commit suicide was examined as ***P.W.2***. The brother of ***P.W.1***, who rushed to their house and admitted ***P.W.1***, ***P.W.2*** and the deceased into the hospital, was examined as ***P.W.3***. Another brother of ***P.W.1,*** who depose to the fact that he heard that his sister and her daughter and son attempted to commit suicide on account of debt problems and thereafter, stood as witness to the observation mahazar, was examined as ***P.W.4***. The husband of ***P.W.1*** was examined as ***P.W.5***. The doctors who treated ***P.W.1***, ***P.W.2*** and the deceased were examined as ***P.W.6*** to ***P.W.8***. One *Livingston*, who was also a witness to the observation mahazar was examined as ***P.W.9***. ***P.W.10*** is also a doctor at Stanley Hospital who treated the deceased. ***P.W.11*** is the Scientific Officer of Forensic Lab, who examined the viscera and submitted the report. ***P.W.12*** is the Sub-Inspector of Police who registered the First Information Report. ***P.W.13*** is the other Sub-Inspector of Police, who handled the dead body of the victim. ***P.W.14*** is the Doctor who conducted the postmortem and the Investigation Officer was examined as ***P.W.15***.

4. On behalf of the prosecution, ***Exhibit P.1*** to ***Exhibit P.15*** were

marked. During the cross examination, on behalf of the defense side, ***Exhibit D.1*** to ***Exhibit D.4*** were also marked. Upon being questioned about the material evidence on record and the incriminating circumstances under Section 313 of the Code of Criminal Procedure, the accused denied the same. Thereafter, on behalf of the accused, ***D.W.1*** to ***D.W.4*** were examined and the defense side was closed. Thereafter, the Trial Court proceeded to hear learned Additional Public Prosecutor for the State and learned counsel on behalf of the accused and by its judgment dated 19.03.2020, found the accused guilty for the offence under Section 306 r/w 4 and 9 of the Tamil Nadu Prohibition of Exorbitant Interest Act, 2003 and imposed the judgment of ten years of rigorous imprisonment and to pay a fine of Rs.10,000/- and on default of payment of fine, to undergo simple imprisonment for a period of one year; found the accused guilty also for the evidences under Section 308 of the Indian Penal code (2 counts) and sentenced to undergo three years rigorous imprisonment for each count and to pay fine of Rs.10,000/- for each count and in default to undergo simple imprisonment of six months. Aggrieved by the same, the present appeal is laid before this Court.

5. Heard *Mr.N.R.Elango*, learned Senior Counsel appearing on behalf of the appellant and *Mr.S.Vinoth Kumar*, learned Government Advocate, appearing on behalf of the prosecution.

6. According to learned Senior Counsel on behalf of the appellant, at the face of it, the nature of the allegations mentioned in the case of the prosecution and the evidence on record, the offence under Section 308 is not at all made out. As far as the offence under Section 306 r/w Section 4 and 9 of the Tamil Nadu Prohibition of Exorbitant Interest Act, 2003 is concerned, firstly, learned Senior Counsel draws this Court's attention to the earliest statement given by ***P.W.1*** in which, though she had said that she had borrowed money from the said *Saravanan* for ten per cent interest per month and she was unable to repay the sum, the reading of the complaint would clearly show that they took the decision to commit suicide unable to bare the burden of debt and the impugned occurrence as if the accused went to their house and threatened them was never mentioned in the said complaint. This apart, even ***P.W.4***, the other brother also did not mention about this in the chief examination and they all had deposed in tandem corroborating with the original complaint only. Only

P.W.1 and ***P.W.2*** improved their version during the investigation and subsequently while deposing before this Court as if an incident has happened on the day of occurrence that the accused went to their house and threatened them in filthy language and also harassed them by stating that, ***P.W.1*** should send ***P.W.2*** for prostitution and pay her debt and shattered and unable to bare the said words and harassment, they all attempted to commit suicide. In support of the said allegation, except the *ipse dixit* of ***P.W.1*** and ***P.W.2***, the Investigating Officer himself has admitted in his cross examination that he has not collected any material to prove even the avocation of the accused, that he is involved in the lending and collection of money on exorbitant interest to people.

7. Learned Senior Counsel further submitted that, admittedly, in this case, there is another transaction which is proved to the hilt by the defense wherein, ***P.W.1*** and ***P.W.2*** has admitted their signatures in ***Exhibit D.4***, which is an undertaking letter. It is clear from cross examination of ***P.W.1*** and ***P.W.2*** that actually, ***P.W.1*** had obtained a sum of Rs.5 lakhs from the appellant to convey some land by way of real-estate deal involving one *Yobu Saravanan*. The said *Yobu Saravanan* is proved to be a fraudster and

he has several cases of cheating against him and only because ***P.W.1*** got involved in real-estate transactions with the said person, she was unable to pay money and to this extent, the reading of the ***Exhibit D.4***, letter of undertaking, would be clear that the instant one was not because of loan transaction, but were unable to return the money which the ***P.W.1*** had mishandled and ventured into in her real-estate dealings and it is only an afterthought to rope-in the accused. Even the evidence of ***P.W.5***, the husband of ***P.W.1*** would be clear that the avocation of the accused is saree sales. ***P.W.5,*** husband of ***P.W.1,*** categorically admits about the real-estate ventures of his wife and that she was forced to leave to Bangalore, since people were coming to her for the default committed by *Yobu Saravanan*. These facts were categorically and clearly suppressed by ***P.W.1*** and ***P.W.2*** in the investigation, which is also admitted by them in Court. Therefore, this would clearly demonstrate that the entire prosecution case is doubtful and therefore learned Senior Counsel would pray that the appellant should be given the benefit of doubt and should be acquitted of the case in toto.

8. Per contra, *Mr.S.Vinoth Kumar*, learned Government Advocate (Crl. Side) would submit that, firstly, even though the incident regarding

coming to the house by the accused was not specifically mentioned, even the name of *Saravanan* has been subsequently mentioned in ***Exhibit P.1*** complaint and the fact that he had given loan of Rs.5 lakhs for ten per cent interest per month, which is exorbitant interest, is clearly stated by ***P.W.1*** in ***Exhibit P.1*** itself. The said facts have been categorically spoken while examination before the Court. There was no any necessity for ***P.W.1*** to make such false allegation. As a matter of fact, the defense themselves has marked so many blank cheques, which would prove that the accused is in the business of lending money to people and collecting exorbitant interest. As far as the charge under Section 306 is concerned, learned Government Advocate (Crl. Side) would submit that the question, as to whether the conduct amounts to instigation has to be tested by taking into consideration the background of the parties and other sensitivities of the issue. Admittedly, ***P.W.2*** is a not married girl and the deceased is a not married boy, both of them were properly working in private concerns and earning salary. In that context, if the creditor comes to the house and speaks to them in such a manner, that would amount to extreme harassment, instigating them to commit suicide. Therefore, in this case the prosecution has rightly charged the accused for the offence under Section

306 r/w Section 4 and 9 of the Tamil Nadu Prohibition of Exorbitant Interest Act, 2003. When ***P.W.1*** and ***P.W.2*** have taken the extreme step, their statement is believable and their evidence is stellar in quality and therefore, the Trial Court has convicted the accused. As far as the charge under 308 is concerned, learned Government Advocate (Crl. Side) upon reading the nature of the offence would fairly concede that, no charge can be framed or made out as against the accused.

9. I have considered the rival submissions made on behalf of either side and perused the material evidences on record.

10. Firstly, in dealing with the conviction of the appellant under Section 308 of the Indian Penal Code is concerned, it is necessary to extract Section 308 of the Indian Penal Code;

> *"**Section 308. Attempt to commit culpable homicide-***
> *Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not*

amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

11. Thus, it can be seen that this is a specific offence for punishing any attempt to commit culpable homicide. The entire case does not realise so, the appellant attempting to commit any culpable homicide. Therefore, the framing of charge under Section 308 (2 counts) is on the face if it is incorrect and therefore, the conviction is totally unsustainable and therefore, the conviction and sentence imposed by the Trial Court in respect of the said charge is liable to be set aside by this Court and accordingly, the same stands set aside.

12. Now, coming to the other charge under Section 306 r/w Section 4 and 9 of the Tamil Nadu Prohibition of Exorbitant Interest Act, 2003 is concerned, firstly, to prove the charge under Section 306, the prosecution

has to prove the conduct of the accused which amounts to abetment. The Hon'ble Supreme Court of India in ***Ramesh Kumar Vs. State of Chandigarh***[1]**,** has categorically held in paragraph 20 as to what the meaning of the word "instigation" is and it is useful to extract the paragraph No.20 of the said Judgment as follows:-

> *"**20.** 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. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually*

1 (2001) 9 SCC 618

follow cannot be said to be instigation."

13. Therefore, there must be some act of the accused by which the accused should have especially goaded, encouraged and enticed the victim to commit suicide and the prosecution also have to prove that he had the intention to do so. Firstly, in this case, the very occurrence of the accused coming to the house of the ***P.W.1*** itself is doubtful. It is an important factor and a sole factor which prompted the ***P.W.1***, ***P.W.2*** and the deceased to attempt suicide. The same was not at all mentioned in the ***Exhibit P.1*** complaint. This apart, even ***P.W.1***'s brother, who was examined as ***P.W.4***, in his chief examination has categorically deposed that he heard that his sister, her daughter and son took the extreme step, unable to bare the burden of debt and he also does not mention about the incident. Therefore, the argument of the learned Government Advocate (Crl. Side) that, all details need not be there in the earliest complaint and First Information Report, cannot be accepted in this case because, in this case, the very case itself that, unable to bear the torture, ***P.W.1, P.W.2*** and the deceased have attempted to commit suicide in which case, any reasonable person in the said normal course would have definitely mentioned about the said incident in the complaint. Therefore, not mentioning of the fact raises serious doubt on the case of the prosecution.

14. This apart, in the course of the examination of the Investigating Officer, he categorically admits that he could not collect any material or any document in proof of advance of the loan. He could not collect any material in proof of the avocation of the accused that he is in the business of giving loan with exorbitant interest rate to ***P.W.1*** or to any other person. There is no other evidence on record to first prove that the accused is in the avocation of money lending with exorbitant interest rate. Secondly, there is no other document of any nature for giving of loan, etc. The prosecution was unable to seize any notebook or any slip of any nature whatsoever, which is normally maintained in the case of this exorbitant interest. This apart, when ***P.W.1*** and ***P.W.2*** have admitted their signature in ***Exhibit D.4***, I am unable to accept the condition of the learned Government Advocate (Crl. Side) that ***Exhibit D.4*** is a concocted one for the purpose of this case, when ***P.W.1*** and ***P.W.2*** have categorically admitted their signature in the cross examination, there was no any reexamination on behalf of the prosecution and there was no *iota* of doubt expressed about the said

document which is first expressed by learned counsel arguing before this Court alone. Therefore when ***P.W.1*** and ***P.W.2*** have admitted their signature in ***Exhibit D.4,*** which clearly shows that ***P.W.1*** had obtained a sum of Rs.5 lakhs only as an advance amount to convey an extent of land and therefore, she had to return the same. This version of exorbitant interest and borrowing is doubtful.

15. At top of it, the husband of ***P.W.1***, who is examined as ***P.W.5,*** himself has stated as follows:

> " எதிரி சரவணனிடம் 3 ஏக்கர் நிலம் வாங்கித் தருவதாக அக்ரிமென்ட் போட்டு 5 லட்சம் ருபாய் என் மனைவி முன் பணம் வாங்கிய விவரம் என் மகள் முலமாக எனக்கு தெரியும். இந்த அக்ரிமென்ட் படி நிலம் எதுவும் என் மனைவி வாங்கித் தரவில்லை என்றால் எனக்கு அது பற்றி எதுவும் தெரியாது. என் மனைவி அதே நிலத்தை வேறு நபர்களுக்கும் அக்ரிமென்ட் போட்டுள்ள விவரம் எனக்கு தெரியாது. ஆனால் என் மனைவி லேண்டு டிலிங் செய்து வந்த விவரம் எனக்கு தெர்யும்."

16. Therefore, when ***P.W.1*** and ***P.W.2*** had accepted their signatures in ***Exhibit D.4*** and when ***P.W.5*** has accepted about the transaction, when ***P.W.1*** and ***P.W.2*** had suppressed the same during investigation to the Investigating Officer and even before the Court, when they were questioned in the cross examination initially, did not fairly accepted about the real-estate transaction, I hold that the evidence of ***P.W.1*** and ***P.W.2*** is not trust worthy and does not inspire the confidence of the Court, so as to be the solitary evidence to convict the accused, to be taken as proof for lending loan, lending loan with exorbitant interest, coming to their house and shouting with filthy language.

17. Therefore, I am of the view that, in this case, there is no other evidence on record and the evidence of ***P.W.4*** and ***P.W.5*** are only in the nature of supporting the defense case and the accused has therefore, by marking the documents and letting in evidence and also through cross examination, has categorically demonstrated a probable doubt in the case of the prosecution. Therefore, the accused is entitled to the benefit of doubt and it would be extremely unsafe to convict the accused based on

the evidence of ***P.W.1*** and ***P.W.2*** alone.

18. Accordingly, giving the benefit of doubt, the appellant is acquitted for the offence under Section 306 r/w Section 4 and 9 of the Tamil Nadu Prohibition of Exorbitant Interest Act, 2003 also. In the result this Criminal Appeal is allowed. The accused is acquitted of all the charges. Fine amount, if any paid, is ordered to be refunded to the accused.

Index : yes/no 04.07.2022

Speaking order/Non-speaking order
drm

To

1.The Inspector of Police
K-1 Sembium Police Station
Chennai.
(Crime No.1932 of 2013)

2. The Public Prosecutor, High Court of Madras.

D.BHARATHA CHAKRAVARTHY. J.,

drm

Crl.A.No.221 of 2020

04.07.2022