

(2011) 01 MAD CK 0035

In the Madras High Court

Case No : Criminal Appeal No. 460 of 2004

Mubarack, Auto Ismail and Hakkim

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 306, 509

Citation : (2011) 01 MAD CK 0035

Hon'ble Judges : A. Arumughaswamy, J

Bench : Single Bench

Advocate : V. Suresh, for the Appellant; N. Kumanan, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

A. Arumughaswamy, J.—The Appellants/accused 1,2,5 stand convicted for the offences u/s 306 IPC and sentenced to undergo rigorous

imprisonment for ten years each and to pay a fine of Rs. 5000/-each in default to undergo simple imprisonment for one year each and the

Appellants stand convicted for the offence u/s 509 IPC and sentenced to undergo simple imprisonment for one year each and to pay a fine of Rs.

1,000/-each in default to undergo simple imprisonment for three months each and the said sentences were ordered to run concurrently by the

judgment of the learned Sessions Judge, Coimbatore in S.C. No. 205 of 2003 dated 8.3.2004. Challenging the said conviction and sentence, the

Appellants have come forward with the present appeal.

2. The prosecution case is as follows:

P. Ws.1 and 2 are the parents of the deceased. The deceased Pathymuthu was married to one Akbar Ali eight years before. Though they lived

together as husband and wife for some time and subsequently, due to misunderstanding, she came out of the matrimonial home and started living along with P. Ws. 1 and 2 at Coimbatore. It appears that there were some attempts made to unite them which ended in futile. The accused in this case belong to the same locality. On 18.12.2003, at about 11.00 p.m., while P.W.1 was taking water in a nearby water tap, A-2 appeared and wanted P.W.1 to call the deceased for an enquiry. P.W.1 declined to do so stating that a Muslim woman could not be called in such an odd hour for an enquiry. However, A-2 pressurized her to call the deceased. While the said transaction was going on, A-3, A-4 and A-5 also came to the spot. They joined with A-2 and demanded that the deceased should be called for the purpose of an enquiry. Due to the same, P.W.1 went to her house and brought the deceased to the place where these accused were standing. At that time, A-2 asked the deceased as to whether she had illicit intimacy with A-1 by name Mr. Mubarak. She answered in the negative. Then A-2 asked A-5 to bring A-1 to the spot. Shortly, thereafter, A-5 brought A-1 to the place of occurrence. In the presence of deceased and P. Ws. 1 & 2, A-2 asked A-1 as to whether he had illicit intimacy with the deceased. A-1 answered in the affirmative. On hearing the same, the deceased started crying denying the said statement. The other accused viz., A-6, A-7 and A-8 also joined with the other accused. The deceased told them that the said statement made by A-1 was false and that she had no illicit intimacy with A-1 at all. After this conversation, the deceased rushed to her house. P.W.1 followed her. But P.W.1 could not find the deceased. The children at home told P.W.1 that the deceased had gone to upstairs. P.W.1, therefore, rushed to the upstairs of the house. To his shock, she found the deceased hanging by using her shawl from the wooden beam. P.W.1 tried to help the deceased. The people from neighborhood were also attracted by the same. The deceased was removed from knot and rushed to the hospital. But the Doctor declared her dead. Thereafter, P.W.1 proceeded to the police station on the next day i.e. on 19.12.2003 morning at 6.00 a.m. and preferred a complaint.

3. P.W.8, who was the then Sub-Inspector of Police of B-12 Police Station, registered a case on the said complaint in Crime No. 109/2003 u/s 306 I.P.C. Ex.P1 is the printed F.I.R. Investigation was thereafter taken up by P.W.9 who is the then Inspector of Police of the said Police

Station.

4. P.W.9 proceeded to the place of occurrence and prepared observation mahazar and rough sketch and also held inquest on the body of the

deceased. He examined P. Ws.1 to 6 and recorded their statements. On completing inquest, through letter under Ex.P1, he forwarded the body

for autopsy. P.W.7 Dr. Gnanadurai who was the then Tutor of Forensic Medicine at Coimbatore Medical College conducted autopsy on the body

of the deceased and he found the following external injuries:

An oblique incomplete ligature mark of 21 cms x 1.5 cms seen encircling the upper part of front and sides of the neck with a gap of 9 cms seen in

the posterior aspect of neck, where it merges with the hairline. The anatomical locations of the ligature marks are as follows:

-3 cms below the right mastoid, 6 cms below the middle of the chin and 7 cms below the left mastoid. -

On blood less dissection of the neck, the base of the ligature mark is hard and parchment like. There is no extra vacation of blood seen in the

superficial and deep planes of the neck. Underlying neck structures are found normal. -

Hyoid bone intact.

-Multiple superficial surface incisions made all over the body reveals nil other injury.

5. Ex.P15 is the post mortem certificate. He forwarded the viscera for chemical examination. Ex.P6 is the chemical analysis report. He opined that

the deceased died due to suicidal hanging. Ex.P7 is the final opinion. On completing the investigation , P.W.9 laid final report. On committal, the

case was tried by the Special Judge, Court for women in Sessions Case No. 205 of 2003.

6. The trial court framed charges under Sections 147, 509 and 306 I.P.C., against all the accused. All the accused denied the charges and

therefore, they were put on trial.

7. During the trial of the case, on the side of the prosecution, as many as 9 witnesses were examined and 11 documents were exhibited besides, 5

material objects. When the accused were questioned in respect of the incriminating materials, they denied the same. However, they did not

examine any of the witnesses on their side. Having considered all the above, the

trial court convicted A-1, A-2 and A-5 and sentenced them as detailed in the first paragraph of this judgment. It is against the said conviction and sentence, the Appellants are before this Court with this appeal.

8. In this appeal, it is mainly contended by the learned Counsel for the Appellants that even assuming that the evidences of P. Ws.1 to 3 are taken into consideration, even then, offence u/s 306 IPC would not be attracted. The learned Counsel would submit that absolutely there has been no evidence to show that there are required legal mental element on the part of the accused to drive the deceased to commit suicide. He would further submit that none of the ingredients as required u/s 306 I.P.C have been established by the prosecution. He would further submit that offence u/s 509 also would not be made out as against any of the accused. The learned Counsel would take me through the evidence let in by the prosecution in extension to substantiate his contention.

9. The learned Counsel for the Appellants would submit that to prove the offence u/s 306, the Apex Court in a catena of decisions has laid down the following ingredients which must be available so as to constitute the offence:

1. What constitutes instigation must necessarily and specifically be suggestive of consequence. Ramesh Kumar Vs. State of Chhattisgarh,
2. There should be reasonable certainty to incite the consequence which must be capable of being spelt out. Ramesh Kumar Vs. State of Chhattisgarh,
3. A word uttered in a fit of anger or emotion without intending consequences to actually follow cannot be said to be instigation. Ramesh Kumar Vs. State of Chhattisgarh,
4. The presence of mensrea is necessary concomitant for instigation. Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh,
5. Use of the words by itself will not constitute instigation. Gangula Mohan Reddy Vs. State of Andhra Pradesh,
6. There is a difference between to provoke, to goad, to instigate Ramesh Kumar Vs. State of Chhattisgarh,
7. The accused must have played an active role Amalendu Pal @ Jhantu Vs. State of West Bengal,
8. Without a positive act on the part of the accused to instigate or aid the conviction cannot be sustained. Gangula Mohan Reddy Vs. State of

Andhra Pradesh,

10. From a close reading of these judgments, it could be culled out that for establishing an offence u/s 306 I.P.C., essentially, the prosecution has

to prove that the accused had mensrea to instigate or to aid the commission of suicide by the deceased. Mere uttering of words which may even be

provocative may not constitute instigation or aiding to commit suicide. With these broad principles in mind, if the facts of the present case are

looked into, I find no material at all on record to hold that the accused had any mensrea in their mind either to instigate or to drive the deceased to

commit suicide. From the evidence of P. Ws. 1 and 2, it could be seen that there was no motive at all for the accused to drive the deceased to

commit suicide. It is no explained as to what prompted these accused to go over near the house of the deceased to call her in open to enquire

about her alleged intimacy with A-1. In the absence of any acceptable evidence, it would be too difficult to believe that these accused would have

done anything actively to drive the deceased to commit suicide. Therefore, I am of the firm view that it would not be safe to convict the accused on

the evidence available on record u/s 306 IPC. Similarly, in respect of conviction u/s 509 IPC also, since it is too hard to believe the evidence of P.

Ws1 and 2, the question of convicting them is not safe. In view of all the above, I hold that the prosecution has failed to prove the case beyond

reasonable doubt so as to sustain the conviction.

11. In the result, the appeal is allowed; conviction and sentence imposed upon the Appellants are set aside and they are acquitted. Fine if any paid

already is ordered to be refunded to the Appellants. The bail bonds shall stand cancelled.