

Mariappan Vs. 1. Subban

Mariappan Vs. 1. Subban

SooperKanoon Citation : sooperkanoon.com/65690

Court : Chennai

Decided On : Sep-07-2015

Judge : The Hon'ble Mrs.Justice S.Vimala

Appellant : Mariappan

Respondent : 1. Subban

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

07. 09.2015 CORAM THE HON'BLE MRS.JUSTICE S.VIMALA CrI.R.C.(MD)
No.366 of 2010 Mariappan ... Petitioner / Defacto complainant / P.W.1 Vs.

1. Subban 2. Ganesan 3. Gunasekaran ... Respondents 1 to 3 / A1, A3 & A2 4.
The State Rep. By The Inspector of Police, CBCID, Karur Velayuthampalayam
Police Station, Karur District. (Crime No.23 of 2005) ... Respondent PRAYER: This
Criminal Revision Petition is filed under Sections 397 and 401 of Cr.P.C., to call for
the records from the order passed in C.A.Nos.38 and 39 of 2009 dated 23.02.2010
on the file of the Sessions Judge, Karur and restore the conviction and sentence
made in S.C.No.16 of 2009 dated 14.10.2009 on the file of the Assistant Sessions
Judge-cum-Chief Judicial Magistrate and set aside the same. !For Petitioner :
Mr.R.Venkateswaran For Mr.T.Vadivelan ^For R1 to R3 : Mr.A.Padmanabhan For
R4 : Mr.P.Kandasamy Govt. Advocate (CrI.side) :

ORDER

?.Both people in a relationship have a mutual responsibility to end it gracefully rather than abruptly. One might disengage and walk out, but the other may find it difficult to move on in rest of the life?. - said Neuropsychiatrist Dr E.S. Krishnamoorthy, The only unique legal provision under which the attempt alone will become an offence and not the act itself is Section 306 IPC.

2. Suicide consists of a self killing inspired by deliberate intention of the deceased to put an end to his own existence. It was said so in R vs. Russel (1831 L Moor CC356.

3. To constitute the offence under Section 306, the prosecution has to establish that, a) the deceased died of suicide b) that the suicide was abetted by the accused; As per section 107 of Indian Penal Code, a person can be said to have abetted in doing of a thing, a) if he instigates any person to do that thing, b) if he engages with one or more other person / persons in any conspiracy for the doing of that thing, and if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, c) if he intentionally aids, by any act or illegal omission in the doing of that thing.

4. It is the case of the prosecution that the suicide of Saravanan, who was alleged to have fallen in love with Amudha, was abetted by the accused 1 to 5, namely, Subban, Gunasekaran, Ganesan, Amudha and Kili @ Sakunthala . The death of Saravanan was on account of suicide is not a disputed fact. The only disputed fact is whether the death was on account of the abetment caused by the accused 1 to 5, as per the provisions of Section 107 of Indian Penal Code.

5. The Trial Court, on consideration of the materials placed before it, found accused 1 to 3 guilty under Sections 452, 506(ii), 120(b) and 306 r/w 120(b) Indian Penal Code. The accused 4 and 5 were given the benefit of doubt and they were ordered to be acquitted.

6. Challenging the conviction and sentence, two appeals were filed, i.e., one in C.A.No.38 of 2009 (by accused Subban and Ganesan) and other one in C.A.No.39 of 2009 (filed by the accused Gunasekaran), both of which came to be allowed, by which all the three accused persons were acquitted. Challenging the

acquittal, the defacto complainant, i.e., father of the deceased has filed this revision petition.

7. It is the case of the defacto complainant that it is only the act of the accused persons, which drove the accused to the extent of committing suicide, of which, the deceased was not left with any other option. In other words, the contention is that the act of the accused was the direct and the proximate cause of the deceased committing suicide.

8. The yet another contention is that the Trial Court ought to have accepted the suicide note and should have found the accused guilty.

9. Therefore, the main question to be considered is, a) whether the act alleged (physical assault) on the part of the accused 1 to 3 would amount to instigation to the deceased to commit suicide; b) whether the contents of the suicide note, even assuming it to be true, would amount to the proof of instigation on the part of the accused persons to the extent of driving the deceased to commit suicide; c) whether the alleged extra judicial confession said to have made by the accused persons would amount to abetment to commit suicide.

10. In order to appreciate the grounds of revision, it is necessary to consider some basic facts. 10.1. The statistics published by National Crime Record Bureau with regard to incidence of suicide regarding various causes need to be mentioned. ?Love affairs and family problems seem to be the major reasons why people in India end their lives more than economic causes, such as poverty, unemployment or insolvency, according to statistics published by the National Crime Records Bureau (NCRB). Incidence of suicide due to family problems accounts for 25.6 per cent of all such deaths recorded in the country in 2012, while love affairs account for 3.2 per cent. According to the NCRB report ?Accidental Deaths and Suicides in India 2012?, 2 per cent of all suicidal deaths were due to bankruptcy or sudden change in economic status. Incidence of suicides due to poverty and unemployment stood at 1.9 per cent and 1.4 per cent respectively. In all, family problems (25.6 per cent) and love affairs (3.2 percent) accounted for 28.8 percent of total suicides in the country during 2012. Tamil Nadu is no exception to this nationwide trend. The state, which has recorded the maximum number of suicides

in the country, also reported the second highest incidence of suicide due to family problems after Maharashtra.?. 10.2. The word suicide means, sui means self and cide means killing. The very definition implies that it is the act on the part of the deceased himself. Therefore, the question is whether the decision to commit suicide was on account of the personal decision taken by the deceased himself irrespective of the abetment committed. 10.3. There is often confusion over suicide investigation in the absence of uniform rules or policy, leaving cases open to the discretion of the investigating police officer, admit legal experts. It is time that defining what would amount to abetment to commit suicide must be referred to Law Commission.

11. The extra judicial confession is normally a weak piece of evidence and unless there is corroboration in material particulars, it is not safe in relying upon the extra judicial confession. So far as this case is concerned, the prosecution has relied upon the evidence of P.W.21 Murugesan, P.W.22 Rajendran. According to the prosecution, the first accused told P.Ws21 and 22 that the first accused told them that about two days back, he had beaten the deceased Saravanan, as he was repeatedly causing disturbance. Whether this evidence is reliable and if so, it is sufficient is the issue to be considered.

12. The statement of those two witnesses are alleged to have been recorded on 31.05.2006 and 13.06.2006, have been sent to the Court after an unexplained delay of 11 months. P.W.21 would state that he was examined by CBCID Police, but he cannot say when he was examined. Similarly, P.W.22 would state that he was examined by CBCID Police after one year. From the nature of evidence adduced, it can easily be concluded that there could not have been an extra judicial confession by the first accused to P.Ws.21 and 22.

13. The next contention is with reference to suicide note. Much was argued about the suspicious circumstances surrounding the alleged recovery itself. It was also pointed out that even the hand writing expert did not conclusively say that the writings were that of the deceased. It is enough to consider whether even assuming the writings to be that of the deceased, would amount to abetment to commit suicide. It would be appropriate to reproduce the suicide note, which is in

Tamil as under; ?vd;id bfhd;W tpLthf kpwl;Lfpwhh;fs;/ vd;Dila kuzj;jpw;F fhuzk; U.S.A. tp\$af;Fkhh; kuthghisak; Rg;g[. g[fYhh; Fzr;nrfud;. fhl;L:h; fnzrd; ?. ,g;gof;F M.rutzd; (xg;gk;)? . They are intimidating to kill me. U.S.A.Vijayakumar and Maravapalayam Subbu, Pugalur Gunasekaran, Kattur Ganesan are responsible for my death. By M.Saravanan (sd.) 14. Pointing out this suicide note, it is contended that mens rea is a necessary concomitant for instigation and there cannot be any motive for the accused persons to cause the death of the deceased and at the most, the intention of threat would be only to dissociate the relationship between the deceased and Amudha and nothing more and therefore, this suicide note cannot amount to proof of instigation to commit suicide. In order to support the submission, the decision reported in 2002 SCC (Cr.) 1141 [Sanju @ Sanjay Singhy Sengar vs. State of M.P.]. has been cited as under: ?12.Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25.07.1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased "to go and die". For this, courts relied on a statement of Shashi Bhushan, brother of the deceased, made under section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under sec.161 Cr.P.C., is annexed as Annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him "to go and die". Even if we accept the prosecution story that the appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of "instigation". The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion Secondly, the alleged abusive words, said to have been told to the deceased were on 25.7.1998 ensued by a quarrel. The deceased was found hanging on 27.07.1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said

that the abusive language, which had been used by the appellant on 25.07.1998 drove the deceased to commit suicide. Suicide by the deceased on 27.7.1998 is not proximate to the abusive language uttered by the appellant on 25.7.1998. The fact that the deceased committed suicide on 27.7.1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25.7.1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below."

15. Therefore, even assuming that the suicide note is that of the deceased Saravanan, the contents of the suicide note would not amount to incitement to commit suicide. It is relevant to point out that it is not stated that in what way these accused persons are responsible for the suicidal death of the deceased.

16. The evidence of the father of the deceased in chief examination is that there was a love affair between Saravanan and Amudha right from the year 2001. According to him, on a certain day, when he was not available at home, P.W.1 along with one Kuppan and his son took the deceased to Pugalur Sugar Mills and they had beaten him.

17. In the cross examination, he would state that his version regarding his son having been beaten took place long years ago and he had no direct knowledge regarding that.

18. The sister of the deceased was examined as P.W.7. According to her, the deceased and Amudha had been in love with each other for five years and they had decided to have register marriage just 15 days prior to the death of Saravanan and that the deceased had informed her that Amudha was disconnecting his phone and she could help him in restoring the connection. What is suggested through the evidence is that only because Amudha refused to marry Saravanan, he took the decision of committing suicide. Therefore, even according to the version of prosecution, two reasons have been propounded. Either one of the reasons could have been the contributing cause or both should have been the contributing cause or anything else could also have been the cause for Saravanan to commit suicide is the issue to be considered. In other words, the prosecution has not come forward with the definite case regarding the cause of death of

Saravanan.

19. When the prosecution itself has unfolded two theories for the probable cause of death of Saravanan, the contention that the content of the suicide note would amount to proof of cause of death cannot be accepted. There is no more circumstance to be considered in this case. During questioning statement has been filed stating that Amudha was in love with the deceased and at a later point of time, on coming to know his drinking habits,, she was not inclined to marry. This contention is probablized from the letter written by Amudha to the deceased wherein she has requested to stop him from drinking. Under such circumstances, when circumstances indicate that two many options were available for the deceased to fight out his problem of marrying Amudha, it cannot be said that the accused persons were responsible for the suicide.

20. It would be appropriate to quote the extent of jurisdiction of the Revisional Court, when the Revisional Court is invoked by the private complainant against the order of acquittal. In the following two decisions reported in D.Stephens vs. Nosibala AIR 1951 SC196 and Logendranath vs. Polai Lal Biswas, AIR 1951 SC316 it has been held as follows: ".The revisional jurisdiction conferred on the High Court under s. 439 of the Code of Criminal Procedure is not to be lightly exercised when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under s.

417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or mis-appreciated the evidence on the record. - (AIR 1951 SC196). ".Though sub-s. (1) of s. 439 of the Criminal Procedure Code authorises the High Court to exercise in its discretion any of the powers conferred on a court of appeal by s. 423, yet sub-s. (4) specifically excludes the power to "convert a finding of acquittal into one of conviction."

This. Does not mean that in dealing with a revision petition by a private party against an order of acquittal, the High Court can in the absence of any error on a

point of law re-ap-praise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stops short of finding the accused guilty and passing sentence on him, by ordering a retrial.?. - (AIR 1951 SC316 21. There is no manifest illegality or perversity in appreciation of evidence or there is no impropriety in following the procedure and hence, there are no grounds to interfere. In the result, this Criminal Revision petition is dismissed. To 1. The Sessions Judge, Karur.

2. The Assistant Sessions Judge -cum-Chief Judicial Magistrate, Karur.

3. The Inspector of Police, CBCID, Karur Velayuthampalayam Police Station, Karur District.

4. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madura. .

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com