REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 953 OF 2021

Velladurai …. Appellant

Versus

State represented by the Inspector of Police … Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 03.07.2019 passed by the High Court of Judicature at Madras, Bench at Madurai in Criminal Appeal (MD) No. 417 of 2009, by which the High Court has dismissed the said appeal preferred by the appellant herein – original accused and has confirmed the judgment and order of conviction passed by the learned trial Court convicting the accused for the offence under Section 306 IPC and sentencing him to

undergo three years RI, the original accused has preferred the present appeal.

2. That the appellant herein – accused married with the deceased 25 years prior to the occurrence; that out of the said wedlock, they had three children, one married daughter PW2, living separately and their two sons working at Chennai and Kerala. That on the day of occurrence there was some quarrel between the deceased – wife of the accused and the accused. That thereafter both the deceased as well as the appellant herein consumed pesticide. However, the appellant survived, but his wife died due to consuming the pesticide. The younger brother of the deceased – PW1 lodged a complaint stating that the accused is having intimacy with the other woman and therefore the couple is used to quarrel and in this regard a panchayat was also convened by elders prior to the occurrence and due to which on 7.5.2007 there was a quarrel and both of them consumed pesticide and were taken to the local private hospital and the deceased died and the accused discharged after four days. Therefore, it was alleged against the accused that he has committed the offence under Section 306 IPC. On conclusion of the investigation, a chargesheet was filed against the appellant-accused for the offence under Section 306 IPC.

2.1 The learned trial Court convicted the accused-appellant herein for the offence under Section 306 IPC and sentenced him to undergo 7 years RI and to pay a fine of Rs. 2500/-, in default of payment of fine, three months simple imprisonment and also for the offence under Section 4(b) of the Tamil Nadu Prohibition of Harassment of Women Act and sentenced him to undergo three years RI and to pay a fine of Rs.2500/-, in default of payment of fine, three months simple imprisonment.

3. Aggrieved by the judgment of the trial Court, the appellant herein – original accused preferred appeal before the High Court. By the impugned judgment and order, the High Court has partly allowed the said appeal, however, confirmed the conviction for the offence under Section 306 IPC, but reduced the sentence to three years RI.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original accused has preferred the present appeal.

5. Learned counsel appearing for the appellant has submitted that the High Court has committed a grave error in dismissing the appeal and confirming the judgment and order passed by the learned trial Court convicting the accused for the offence under Section 306 IPC.

5.1 It is further submitted that no ingredients of Section 306 IPC are at all satisfied. It is submitted that it is not established and proved that in fact the appellant abetted the commission of suicide. It is submitted that it is also not in dispute that the quarrel had taken place, but at the same time the accused also consumed pesticide along with his wife. However, unfortunately the wife died. It is submitted that except the quarrel between the appellant-husband and the deceased-wife on the day of occurrence, there is no further evidence making out a case for the offence under Section 306 IPC.

5.2 It is further submitted that even PW2, the daughter also turned hostile and not supported the case of the prosecution.

5.3 Making the above submissions and relying upon the decisions of this Court in the cases of *Amalendu Pal v. State of West Bengal, reported in (2010) 1 SCC 707; and Chitresh Kumar Chopra v. State (Government of NCT of Delhi), reported in (2009) 16 SCC 605*, it is prayed to allow the present appeal and quash and set aside the impugned judgments and orders passed by the courts below convicting the appellant-accused for the offence under Section 306 IPC read with Section 4(b) of Tamil Nadu Prohibition of Harassment of Women Act.

6. Learned counsel appearing for the State has opposed the present appeal. It is submitted that on the day of occurrence quarrel took place

between the deceased and the appellant. It is submitted that even earlier also quarrels took place as the appellant-accused was having illicit relationship with another woman. It is submitted that because of that there were frequent quarrels between the husband and the wife and that is why the deceased committed suicide. It is submitted therefore in the facts and circumstances of the case, no error has been committed by the courts below in convicting the accused for the offence under Section 306 IPC read with Section 4(b) of Tamil Nadu Prohibition of Harassment of Women Act.

7. We have heard the learned counsel for the respective parties at length.

7.1 The appellant has been convicted mainly for the offence under Section 306 IPC. It is not in dispute that the marriage between the appellant and the deceased took place before 25 years. It is also not in dispute that out of the said wedlock, the deceased and the appellant had three children, residing separately. It is true that on the day of occurrence, there was a quarrel between the deceased and the appellant herein – accused and thereafter both, the appellant and the deceased consumed pesticide. Even the appellant – accused also consumed pesticide and he was hospitalised for four days and was discharged from the hospital after four days. However, unfortunately the

wife died. The earlier quarrels between the husband and the wife on the allegation that the appellant-accused was having illicit relationship with another woman has not been established and proved by the prosecution. Even the daughter of the appellant has not supported the case of the prosecution and turned hostile. In light of the aforesaid facts and circumstances and the evidence on record, it is required to be considered, whether can it be said that the appellant-accused has committed an offence under Section 306 IPC for which he has been convicted?

8. As observed hereinabove, the marriage between the appellant-accused and the deceased took place before 25 years. Therefore, the presumption under Section 113-A of the Evidence Act shall not arise.

9. Now so far as the offence under Section 306 IPC is concerned, in a case where if any person instigates other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished for the offence under Section 306 IPC for abetting the commission of suicide. Therefore, in order to bring a case within the provision of Section 306 IPC, 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 instigating or by

doing a certain act to facilitate the commission of suicide. As observed and held by this Court in the case of *Amalendu Pal (supra)*, mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC.

9.1 Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no other option except to commit suicide. In the instant case, the allegation against the appellant is that there was a quarrel on the day of occurrence. There is no other material on record which indicates abetment. There is no material on record that the appellant-accused played an active role by an act of instigating the deceased to facilitate the commission of suicide. On the contrary, in the present case, even the appellant-accused also tried to commit suicide and consumed pesticide. Under the circumstances and in the facts and circumstances of the case and there is no other material on record which indicates abetment, both the High Court as well as the learned trial Court have committed an error in convicting the accused for the offence under Section 306 IPC.

10. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order dated 03.07.2019 passed by the High Court in Criminal Appeal (MD) No. 417/2009, as also, the judgment and order dated 04.12.2009 passed by the learned trial Court convicting the accused for the offence under Section 306 IPC and Section 4(b) of Tamil Nadu Prohibition of Harassment of Women Act, are hereby quashed and set aside.

11. By order dated 14.02.2020, the appellant herein-accused was released on bail by this Court on the terms and conditions as may be fixed by the trial Court. In view of this, his bail bonds shall stand discharged.

12. The instant appeal is allowed in the aforesaid terms.

……..J.
[M.R. Shah]

New Delhi;
September 14, 2021.

……..J.
[Aniruddha Bose]