

**M. Vijayakumar
v.
State of Tamil Nadu**

(Criminal Appeal No. 1078 of 2024)

21 February 2024

[C.T. Ravikumar* and Rajesh Bindal, JJ.]

Issue for Consideration

Prosecution, if succeeded in establishing that there was mens rea on the part of the appellant to commit the offence rather to push the victim to commit suicide and to attract the offence u/s. 306, IPC.

Headnotes

Penal Code, 1860 – s. 306 – Abetment of suicide – Conviction u/s. 306, when sustainable – Prosecution case that the appellant and others abducted and wrongfully confined the victim for repayment of the balance amount and the inability to withstand the torment, he committed suicide – Conviction of the appellant u/ss. 306, 342 and 365 by the trial court, however, the High Court acquitted him for the offence u/ss. 342 and 365 but upheld conviction for the offence u/s. 306 – Sustainability:

Held: One has to consider the mens rea of the accused/convict to bring about suicide of the victim – It requires an active act or direct act which led the victim to commit suicide seeing no option; and the act must have been of such a degree intending to push the deceased into such a position that he/she committed suicide – Gravamen of the offence punishable u/s. 306, is abetting suicide – Abetment imposes a mental process of instigating a person or initially aiding a person in doing the offence – Evidence of the prosecution witness did not reveal existence of the element of mens rea on the part of the appellant abetting the deceased to commit suicide – There is nothing in their oral testimonies which would suggest that the appellant had instigated the deceased to commit suicide – Though the prosecution got a case that one person had witnessed the appellant taking the victim and wrongfully confining him in the said shop, the said person was not examined by the prosecution – At any rate, the fact is that the appellant was

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already acquitted for the offence u/s. 342 and 365 IPC – s. 106 of the Evidence Act cannot be used to shift the burden of proving the offence from the prosecution to the accused – High Court erred in applying s. 106 – Thus, there is absolute absence of any basis for its application against the appellant in view of the evidence on record – Prosecution miserably failed to establish that the appellant had abetted the victim to commit suicide – Conviction of the appellant u/s. 306, IPC cannot be sustained – Appellants conviction u/s. 306 quashed and set aside and he is acquitted. [Paras 14, 17-22]

Criminal law – Mens rea – Meaning of:

Held: Mens rea means a guilty mind – As a general rule, every crime requires a mental element, the nature of which, will depend upon definition of the particular crime in question – Although it is impossible to ascribe any particular meaning to the term ‘mens rea’ as the circumstance to determine the existence of mens rea depends upon the ingredients constituting the particular offence and the expression used in the definition of the particular offence to constitute such offence. [Para 15]

Evidence Act, 1872 – s. 106 – Burden of proving fact especially within knowledge – Application of s. 106:

Held: Section 106 is an exception to the general rule laid down in s. 101 which casts burden of proving a fact on the party who substantially asserts the affirmative of the issue – s. 106 is not intended to relieve any person of that duty or burden – It says that when a fact to be proved, either affirmatively or negatively, is especially within the knowledge of a person, it is for him to prove it – s. 106 in its application to criminal cases, applies where the defence of the accused depends on his proving a fact especially within his knowledge and of nobody else – s.106 cannot be used to shift the burden of proving the offence from the prosecution to the accused – It can only when the prosecution led evidence, which, if believed, will sustain a conviction or which makes out a prima facie case, that the question of shifting the onus to prove such facts on the accused would arise. [Para 18]

Case Law Cited

M. Mohan v. State represented by the Deputy Superintendent of Police, [\[2011\] 3 SCR 437](#) : (2011) 3 SCC 626; *Madan Mohan Singh v. State of Gujarat*, [\[2010\]](#)

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[10 SCR 351](#) : (2010) 8 SCC 628; *Sawal Das v. State of Bihar*, [\[1974\] 3 SCR 74](#) : AIR 1974 SC 778 – relied on.

Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), [\[2009\] 13 SCR 230](#) : (2009) 16 SCC 605, *Director of Enforcement v. MCTM Corp. Pvt. Ltd. & Ors.*, [\[1996\] 1 SCR 215](#) : AIR 1996 SC 1100 – referred to.

Books and Periodicals Cited

Halsbury's Laws of England (4th Edn., Vol-11, Para – 10) – referred to.

List of Acts

Penal Code, 1860; Evidence Act, 1872.

List of Keywords

Suicide; Abetment of suicide; Mens rea; Instigation; Burden of proof; Kidnapping; Wrongful confinement.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1078 of 2024

From the Judgment and Order dated 25.01.2019 of the High Court of Judicature at Madras in CRLA No. 667 of 2011

Appearances for Parties

G. Sivabalamurugan, Selvaraj Mahendran, C. Adhikesavan, S.B. Kamalanathan, P.V. Harikrishnan, Sunil Singh Rawat, Kartik Sandal, Advs. for the Appellant.

D. Kumanan, Mrs. Deepa. S, Sheikh F. Kalia, Veshal Tyagi, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

C.T. Ravikumar, J.

Leave granted.

1. This appeal is directed against the Judgment dated 25.01.2019 passed by the High Court of Judicature at Madras (for short the

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“High Court”) in Criminal Appeal No. 667 of 2011 whereunder the appellant’s conviction under Sections 342 and 365 of the Indian Penal Code, 1860 (IPC for short) was reversed and he was acquitted therefrom, but his conviction for the offence under Section 306, IPC was confirmed. The sentence imposed for the said conviction was reduced to three years rigorous imprisonment from rigorous imprisonment for seven years.

2. As a matter of fact, the appellant stood trial along with the four others, including his father Muthu (A-3). The appellant and one Ravichandran (A-2) stood trial for the offences under Sections 306, 342 and 365, IPC whereas the others were charged only for offences under Sections 342 and 306 IPC. After the trial, the appellant was convicted for all the offences for which he stood the trial and at the same time all his co-accused were acquitted from all the charges. As noticed hereinbefore, in the appellant’s appeal the High Court confirmed the conviction under Section 306, IPC and acquitted him only of the other two offences. Hence, this appeal.
3. Heard learned counsel for the appellant and also the learned Standing Counsel for the State of Tamil Nadu.
4. Before dealing with the contentions and the evidence on record which ultimately resulted in the confirmation of the conviction of the appellant under Section 306, IPC, certain relevant aspects of Section 306, IPC with reference to certain relevant decisions are to be looked into. There can be no doubt with respect to the position that to bring home a charge under Section 306, IPC it is incumbent upon the prosecution to establish :
 - a) That the victim of the offence committed suicide;
 - b) That the accused abetted the commission of suicide;
 - c) That the abetment attracts the ingredients under Section 107,IPC.
5. Section 107, IPC defines the offence of abetment and it is constituted by any of the following:-
 - a) instigation to commit the offence; or
 - b) engaging in conspiracy to commit it; or
 - c) intentionally aiding a person to commit it.

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6. Now, bearing in mind the scope and ambit of Section 107, IPC and its co-relation with Section 306, IPC and the decision of this Court in [M. Mohan v. State represented by the Deputy Superintendent of Police](#)¹ and in [Madan Mohan Singh v. State of Gujarat](#)² we will proceed to consider the case. After referring to an earlier decision in [Chitresh Kumar Chopra v. State \(Govt. of NCT of Delhi\)](#)³, this Court in [M. Mohan's](#) case (supra) analysed the meaning of the word 'abetment' and held in paragraphs 44 and 45 thus:-

"44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It 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/she committed suicide."

7. In the decision in [Madan Mohan Singh's](#) case (supra) this Court was considering an appeal against dismissal of a petition filed under Section 482 Cr. PC to quash the FIR registered against the appellant therein under different Sections of IPC including Section 306, IPC. For the purpose of this case, it is only referred to paragraph 12 therein, insofar as it is relevant which reads thus:-

"In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid

1 [\[2011\] 3 SCR 437](#) : (2011) 3 SCC 626

2 [\[2010\] 10 SCR 351](#) : (2010) 8 SCC 628

3 [\[2009\] 13 S.C.R. 230](#) : (2009) 16 SCC 605

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or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC.....”

8. Thus, an analysis of the provisions under Section 306, IPC with reference to abetment as contemplated under Section 107, IPC and the decisions in [M. Mohan's](#) case (supra) and [Madan Mohan Singh's](#) case (supra) would reveal that while considering the question as to whether a person can be convicted under Section 306, IPC or whether a conviction thereunder could be sustained, one has to consider the *mens rea* of the accused/convict to bring about suicide of the victim. Needless to say, that it requires an active act or direct act which led the victim to commit suicide seeing no option; and in other words, the act must have been of such a degree intending to push the deceased into such a position that he/she committed suicide. Bearing in mind the aforesaid position, we will analyse the case of the prosecution and the evidence on record to find out whether the prosecution had succeeded in bringing conviction to the appellant under Section 306, IPC.
9. A brief reference to the prosecution case is required in the above regard. As per the prosecution, the victim Senthil Kumar, while working as a supplier in Salem Hotel belonging to one Muthu (A-3), borrowed an amount of Rs. 2000/- from the appellant who is the son of A-3. It is the case that the latter arranged it as a loan on the request of the deceased, from one Kishore, Venkatachalpati Finance. The deceased failed to repay the borrowed amount and then the finance company pestered the appellant for repayment. Enraged by this, the appellant along with one Ravichandran (A-2) kidnapped the deceased and brought him to the shop of A-2 and from there took him and wrongfully confined him in the tailor shop of one Sampath Kumar (PW-3), on 06.12.2002 demanding repayment of the borrowed amount. For wrongfully confining him and thereby instigating him to commit suicide, accused Nos. 3 to 5 had played their role along with the appellant and A2. It is unable to withstand the torment that Senthil Kumar committed suicide by hanging in the tailoring shop of PW-3. Indisputably, this was the prosecution case. But the indisputable and the undisputed position is that the prosecution which is supposed to establish its case, as is put forth by it, failed to prove the same. No volume of argument is required to come to such a conclusion as the very acquittal of all

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the co-accused of the appellant by the trial Court and the acquittal of the appellant of the conviction under Sections 342 and 365, IPC, by the High Court as per the impugned judgment, would speak for itself. It is also an undisputable position that despite the acquittal of the co-accused of the appellant and thereafter, the appellant, as above, no appeal was preferred against their acquittal. In the contextual situation it is also relevant to note that though the aforementioned Kishore was cited as a witness for the prosecution but was not examined. According to the prosecution one Alexander had witnessed the appellant taking the deceased and wrongfully confining him in the tailoring shop of PW-3, Smapath Kumar. However, he was also not examined. In view of the aforesaid facts and the judgments of the trial Court as also the High Court it can be indubitably said that the case of the prosecution put forth that the deceased Senthil Kumar was kidnapped and wrongfully confined in the tailoring shop of PW-3 Sampath Kumar was not attempted to be established by the prosecution by examining the aforesaid Kishore and Alexander and at any rate, case of kidnapping and wrongful confinement against the appellant was disbelieved by the High Court.

10. Bearing in mind the aforesaid circumstance that the contentions against the conviction under Section 306, IPC have to be appreciated.
11. Through PW-2, who claimed to be the wife of the deceased Senthil Kumar, the prosecution attempted to establish that one week prior to the occurrence the appellant along with three others went to the house of the deceased and created a ruckus and at that time PW-2 alone was there. According to her, when the deceased came back home, she divulged the entire episode to him. Further, she would depose that her husband had received Rs. 2000/- for interest and it was to be repaid in instalments. She would also depose that earlier, the deceased himself had deposited two installments of Rs. 400/- each, towards the loan amount directly to the aforementioned financial institution. She has also deposed that subsequent to the appellant's iniquitous visit as above, she asked him to come on Wednesday and then paid him an amount of Rs.800/-.
12. PW-2 further deposed that while leaving the house, after that first iniquitous visit, the appellant threatened that the deceased would

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be lifted unless the balance amount is not returned. Going by the evidence of PW2 out of borrowed amount of Rs. 2,000/- an amount of Rs. 1,600/- was paid back. Hence, going by the prosecution case the kidnapping and consequential wrongful confinement was due to the failure on the part of the deceased to repay the balance amount. But then, as noticed above, the case of kidnapping and wrongful confinement was disbelieved by the High Court and consequently, the appellant's conviction under Sections 342 and 365, IPC was set aside and the conviction under Section 306, IPC alone was sustained. It is in the aforesaid context that we have referred to and analysed the provisions under Section 306, IPC and also referred to the decisions in [M. Mohan's](#) case (supra) and [Madan Mohan Singh's](#) case (supra). In the light of the provisions thus analysed with reference to the said decisions the question to be considered is whether the prosecution had succeeded in establishing that there was *mens rea* on the part of the appellant to commit the offence rather to push the victim to commit suicide and to attract the offence under Section 306, IPC.

13. While considering the said question it is relevant to take into account the fact that though the prosecution had attempted to establish the case that the appellant and the second accused herein had committed the offences under Sections 306, 342 and 365, IPC. With the acquittal of the appellant and the second accused under those offences there can be no case of kidnapping or wrongful confinement of the deceased Senthil Kumar, by the appellant. In paragraph 2.1 of the impugned judgment itself the High Court took note of the prosecution case. It is only apropos to extract paragraph 2.1 which reads thus:-

“2.1 It is the case of the prosecution that the deceased Senthil Kumar had borrowed Rs.2,000/- from Vijayakumar (A1), which Vijayakumar (A1) had borrowed from a Finance Company; when Senthil Kumar did not return the money, the Finance Company started mounting pressure on Vijayakumar (A1); therefore, it is alleged that Vijayakumar (A1) and Ravichandran (A2) abducted Senthil Kumar on 06.12.2002 and locked him up in the tailoring shop of Sampath Kumar (PW3) and thereby wrongfully restrained him demanding repayment of the amount; unable to withstand the torment Senthil Kumar committed suicide

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by hanging in the tailoring shop of Sampath Kumar (PW3) on 06.12.2002.”

14. Thus, it is to be considered when the case put forth by the prosecution is abduction and wrongful confinement of the appellant for repayment of the balance amount and the inability to withstand the torment as the instances for accusing the appellant for commission of the offence of ‘abetment of suicide’, how conviction under Section 306, IPC can be sustained in the light of his acquittal under Sections 342 and 365, IPC.
15. In the contextual situation, in view of the analysis of the provisions under Section 306, IPC and the decisions referred to supra, we will also have to consider what is *mens rea*? ‘*Mens rea*’ means a guilty mind. As a general rule, every crime requires a mental element, the nature of which, will depend upon definition of the particular crime in question. Although it is impossible to ascribe any particular meaning to the term ‘*mens rea*’ as the circumstance to determine the existence of *mens rea* depends upon the ingredients constituting the particular offence and the expression used in the definition of the particular offence to constitute such offence. It is only appropriate to refer to Halsbury’s Laws of England (4th Edn., Vol-11, Para-10), going by the same:

“...it is impossible to ascribe any particular meaning to the term ‘mens rea’, concepts such as those of intention, recklessness and knowledge which commonly used as the basis for criminal liability and in some respects, it may be said to be fundamental to it. Generally, subject to both qualification and exception, a person is not to be made criminally liable for serious crimes unless he intends to cause or foresees that he will probably cause or at the lowest he may cause the elements which constitute a crime in question.”

16. In the decision in [Director of Enforcement v. MCTM Corp. Pvt. Ltd. & Ors.](#)⁴, it was observed that *mens rea* is a state of mind and held that under the criminal law *mens rea* is considered as the “guilty intention” and unless it is found that the ‘accused’ had the

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guilty intention to commit the crime, he could not be held guilty of committing the crime.

17. In the case on hand the question to be considered is whether the appellant had instigated as envisaged under Section 107, IPC, to commit the offence under Section 306, IPC. It is in the said circumstances that we have earlier referred to the ingredients to attract offence under Section 306, IPC. Essentially the gravamen of the offence punishable under Section 306, IPC, is abetting suicide. Abetment imposes a mental process of instigating a person or initially aiding a person in doing the offence. In the case on hand, the question is whether the appellant abetted the deceased Senthil Kumar to commit suicide. The evidence of the prosecution witness viz., PW-1 and PW-3 did not reveal existence of the element of *mens rea* on the part of the appellant. There is nothing in their oral testimonies which would suggest that the appellant had instigated the deceased Senthil Kumar to commit suicide. In this context, it is to be noted that the victim committed suicide inside the tailoring shop of PW-3 Sampath Kumar. He would submit that on 06.12.2002 at about 06.30 pm he locked his shop and left the key of the shop with A-3, father of the appellant. Sampath Kumar would further depose that he came to know about the commission of suicide by Senthil Kumar inside his tailoring shop only in the next morning by about 9 O'clock. We have already noted that though the prosecution got a case that one Alexander had witnessed the appellant taking the victim and wrongfully confining him in the said shop, the said Alexander was not examined by the prosecution. At any rate, the fact is that the appellant was already acquitted for the offence under Sections 342 and 365, IPC. It is also to be noted that though A-3, Muthu, (the father of the appellant) was the person to whom PW-3 said to have handed over the key of his shop, he was acquitted by the trial Court and no appeal was filed against his acquittal. The impugned judgment would reveal that even after acquitting the appellant for the offences under Sections 342 & 365, IPC, the High Court confirmed his conviction under Section 306, IPC, holding that the appellant had failed to offer explanation as to how the deceased Senthil Kumar entered into the tailoring Shop of PW-3 to commit suicide in terms of Section 106 of the Evidence Act.
18. We are at a loss to understand as to how Section 106 of the Evidence Act could be applied in the case on hand against the appellant in view with facts narrated above. This Section is an exception to the

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general rule laid down in Section 101 which casts burden of proving a fact on the party who substantially asserts the affirmative of the issue. Section 106 is not intended to relieve any person of that duty or burden. On the contrary, it says that when a fact to be proved, either affirmatively or negatively, is especially within the knowledge of a person, it is for him to prove it. This Section, in its application to criminal cases, applies where the defence of the accused depends on his proving a fact especially within his knowledge and of nobody else. In short, Section 106 cannot be used to shift the burden of proving the offence from the prosecution to the accused. It can only when the prosecution led evidence, which, if believed, will sustain a conviction or which makes out a *prima facie* case, that the question of shifting the onus to prove such fact(s) on the accused would arise. (See the decision in [*Sawal Das v. State of Bihar*⁵](#)).

19. In view of the exposition of law as above and in the absence of anything to make Section 106 applicable to shift the onus on the appellant, the High Court had committed an error in applying Section 106 of the Evidence Act, in the instant case.
20. We have no hesitation, therefore, to hold that there is absolute absence of any basis for its application against the appellant in view of the evidence on record.
21. The upshot of the discussion is that the prosecution has miserably failed to establish that the appellant herein had abetted the victim to commit suicide. The conviction of the appellant under Section 306, IPC cannot be sustained.
22. Resultantly this appeal stands allowed. The appellants conviction under Section 306, IPC which was confirmed vide judgment dated 25.01.2019 passed by the High Court in Criminal Appeal No.667/2011 is quashed and set aside. Consequently, he stands acquitted of the offence under Section 306, IPC. The appellant is already on bail. His bail bonds are discharged.
23. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeal allowed.