

'Suspicion, However Grave, Cannot Take Place Of Proof': Kerala HC Acquits Accused Charged With Abetment Of Suicide

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

P.G. AJITHKUMAR; J.

CRL.A NO. 589 OF 2006; 18 NOVEMBER 2022

MEAMANA BABY versus STATE OF KERALA

Appellant / 1st Accused by Advs. Jacob Abraham, S. Rajeev, K.K. Dheerendrakrishnan, V. Vinay, M.S. Aneer, Sarath K.P., Kochumol Koduvath; Respondent / Complainant by Vipin Narayan, Public Prosecutor

J U D G M E N T

This is an appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973. The 1st accused in S.C.No.137 of 2000 of the Additional Sessions Court (Adhoc-II), Kalpetta is the appellant. He challenges the judgment dated 14.03.2006 whereby he was convicted for an offence punishable under Section 306 of Indian Penal Code, 1860. He was sentenced to undergo simple imprisonment for five years and to pay a fine of Rs.50,000/- and in default of payment of fine, to undergo simple imprisonment for one year. If the fine amount is realised, the same shall be paid to the father of the deceased under Section 357(1) of the Code.

2. Brief facts of the case are that,-

Smt.Lissy Thomas, daughter of PW1 was aged 28 years and employed as a Pharmacist in the Government Health Centre, Pozhuthana. She had a promising career. She was engaged to PW2 Ansal, who also was a promising youngster employed as a clerk in the KSRTC. They were looking forward to have a happy and peaceful married life. But the appellant had a different game plan. He had illicit intimacy with Smt.Lissy Thomas and with a view to satiate his wishes, he with the aid and connivance of accused 2 and 3, made every endeavour to spoil the proposed marriage between Smt.Lissy Thomas and PW2. The appellant with the help of accused Nos. 2 and 3 lured Smt.Lissy Thomas and took her to Mysore, where they stayed in Room No.6 of Chirag Hotel. On 01.09.1990, Smt.Lissy Thomas committed suicide by hanging inside the said room. Tormentation and torture on account of the pressure mounted on Smt.Lissy Thomas by the appellant to continue the relationship and her anxiety on the obvious consequence of spoiling her proposed marriage with PW2, impelled her to commit suicide. She, therefore, after leaving Ext.P5 suicide note, hanged herself. Thus abetment by the appellant resulted in Smt.Lissy Thomas committing suicide at room number 6 in Chirag Hotel, Mysore. This is the case unfolded from the materials placed by the prosecution before the court, which led to the conviction and sentencing of the appellant.

3. PW1 reached the Police Station, Vythiri on 03.09.1990 and submitted Ext.P1 complaint to PW7, the Sub Inspector stating that her daughter was missing. A crime was registered for missing of a woman on the basis of the complaint as per Ext.P12, FIR by PW7. On 02.09.1990, PW3, the Manager of Chirag Hotel, Mysore gave Ext.P6 complaint before the Sub Inspector of Police, Nazarbad Police Station. PW3 lodged Ext.P6 complaining that a woman was found hanging inside room No.6 of his hotel. PW5, the Sub Inspector in that police station, went to the hotel and found in room No.6 Smt.Lissy Thomas hanging on the ceiling fan using a saree. An inquest report of the body was prepared by PW5. Body was sent for postmortem and Ext.P10 is the autopsy report. He noticed Ext.P5 suicide note and Ext.P4 diary inside the room. Since the address of the deceased was available in Ext.P5, he sent a policeman to that address and accordingly the presence of PW1 was procured. After necessary formalities, the body was entrusted with PW1.

- 4.** On getting information regarding the suicide of Smt.Lissy Thomas, PW7, the Sub Inspector of Police, Vythiri Police Station, initiated investigation for offences under Sections 306 and 366 of the I.P.C. The appellant and coaccused were arraigned. After necessary investigation, PW10 lodged charge before the Chief Judicial Magistrate, Kalpetta. The matter was committed by the learned Magistrate and the Sessions Court in turn made the case to the Additional Sessions Judge (Adhoc-II), Kalpetta who held trial in the matter. The trial culminated in conviction of the appellant for the offence under Section 306 of the I.P.C.
- 5.** On 15.03.2006, the appeal was admitted. The sentence was suspended and the appellant was released on bail on conditions.
- 6.** Heard the learned counsel appearing for the appellant and the learned Public Prosecutor.
- 7.** The evidence brought on record through PWs.1, 2, 3, 5, and 6 coupled with Exts.P2, P4, P5, P6, P9, P10, P11 and P18 was relied on by the prosecution to establish the guilt of the appellant. The Additional Sessions Judge found that handwriting in Exts.P4 and P5, the diary and death note, were of Smt.Lissy Thomas and four letters marked as Ext.P18 were written by the appellant. The learned Additional Sessions Judge, after appraising the recitals in those documents, came to the conclusion that the appellant put in all-out efforts to continue his relationship with the deceased and in that attempt he sent letters to PW2 for dissuading him from marrying Smt. Lissy Thomas. Those acts, in the view of the Learned Additional Sessions Judge, instigated Smt.Lissy Thomas to commit suicide.
- 8.** The appellant assails the aforesaid findings of the learned Additional Sessions Judge. It is contended that in order to establish an offence of abetment to commit suicide, the prosecution is bound to prove the death was a suicide and the accused had instigated the deceased to commit suicide with sufficient mens rea. However, in this case, the prosecution failed to prove none of such allegations.
- 9.** The case of the prosecution is that Exts.P4 and P5 were seized by PW5, the Sub Inspector of Police, Nazarbad Police Station, who conducted the initial investigation in the matter, from the room where Smt.Lissy Thomas was found hanging. Ext.P18 letters were seized from the possession of PW2 by PW9 under Ext.P17 mahazar. Four of the said letters were allegedly written by the appellant. PW6 compared the questioned writings in Ext.P4 and P5 with the standard writings made available by the prosecution, which were marked as A1, A1(a) to A1(f), A2 and A2(a) to A2(d). On such examination, PW6 concluded that the writings in Exts.P4 and P5 are that of the deceased Lissy Thomas. Similarly, the specimen writings contained in S3 and S3(a) to S3(k) were compared with the questioned writings in Ext.P18 letters. On such comparison, PW6 concluded that four of Ext.P18 letters were written by the appellant. The contention of the learned counsel for the appellant in this regard is that the sample and specimen writings marked as A1 series and S1 series were not proved to be that of the deceased and the appellant respectively and the report of PW6 cannot, therefore, be acted upon.
- 10.** The learned Public Prosecutor, on the other hand, would submit that the evidence brought on record through PW6 and Ext.P11 would establish that the handwritings in Exts.P4 and P5 are that of the deceased and the same would establish the complicity of the appellant with the crime. It is further contended that the letters produced by PW2 have been proved to be written by the appellant and the contents thereof would establish that the appellant had a definite plan to see that Smt.Lissy Thomas committed suicide. It is pointed out that the recitals in Exts.P4 and P5 reveal that the appellant did everything to sabotage the hope of Smt.Lissy Thomas to have a happy married life, and therefore she

had chosen the inevitable option of suicide. Thus it is contended that the insinuations in Exts.P4 and P5 point fingers only at the appellant. The letters dated 04.07.1990 and 27.06.1990 are said to be sent by the appellant to PW2. From this also his mischievous intention to drive Smt. Lissy Thomas committing suicide is said to be evident. The learned Public Prosecutor accordingly canvassed to confirm the judgment of conviction.

11. The first question is what are the necessary ingredients to constitute an offence under Section 306 of the I.P.C. Section 306 of the IPC reads:

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

12. The Apex Court in **Wazir Chand v. State of Haryana [(1989) 1 SCC 244]** considered that question. It was held that if any person instigates any 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 under Section 306 of the I.P.C. for abetting the commission of suicide. In **S.S.Chheena v. Vijay Kumar Mahajan and another [(2010) 2 SCC 190]**, the Apex Court held that 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. It is further explained that the intention of the legislature is clear that in order to convict a person under Section 306 of the 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 other option and that act must have been intended to push the deceased into such a position that he committed suicide.

13. The Apex Court in **Rajesh v. State of Haryana [(2020) 15 SCC 359]** followed the law laid down in **Ramesh Kumar case [(2001) 9 SCC 618]**. A three-Judge Bench of the Apex Court in **Ramesh Kumar** held that 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. 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 to be inferred.

14. In **Satbir Singh and another v. State of Haryana [(2021) 6 SCC 1]**, the Apex Court held that a bare reading of the provision indicates that for the offence under Section 306 of the IPC the prosecution needs to first establish that a suicide has been committed. Secondly, the prosecution must also prove that the person who is said to have abetted the commission of suicide, has played an active role in the same.

15. It emerges therefore that for constituting an offence under Section 306 of the IPC the prosecution must establish firstly that a suicide has been committed, and secondly that the person who is said to have abetted the commission of suicide, has played an active role in the same with such a mens rea.

16. There is no direct evidence. When PWs.1 and 2 failed to identify the handwritings in Exts.P4 and P5 as that of the deceased. The prosecution relies on circumstantial evidence to prove the charge against the appellant. The mooted circumstances are that,-

- (i) death of Smt.Lissy Thomas was a suicide;
- (ii) the appellant had an illicit relationship with the deceased;

- (iii) her proposal for marriage with PW2 was spoiled at the intervention of the appellant;
- (iv) she along with the appellant used to stay in Chirag Hotel; and
- (v) the scribblings in Ext.P4 diary and the death note contained in Ext.P5 were of the deceased.

17. A three-Judge Bench of the Apex Court after referring to the earlier decisions on the point right from **Hanumant Govind Nargundkar and another v. State of Madhya Pradesh [AIR 1952 SC 343]** held in **Munikrishna @ Krishna v. State by Ulsoor PS [2022 (2) KLT 647 (SC)]** that in a case where circumstantial evidence is relied on, the chain of evidence must be complete and the conclusion which is arrived after examining the chain of evidence must point towards the culpability of the accused and not to any other conclusion. It was also held that in a case of circumstantial evidence, the court has to scrutinize each and every circumstantial possibility, which is placed before it in the form of evidence and the evidence must point towards only one conclusion, which is the guilt of the accused. Therefore, the evidence on record should prove beyond doubt that the proven circumstances lead to the only inference that the appellant had the intention to instigate Smt.Lissy Thomas to commit suicide and in consequence thereof, she had committed suicide.

18. It is the fundamental principle of criminal law that the guilt of the accused has to be proved beyond a reasonable doubt. Its corollary is that the proved circumstances should establish beyond doubt that the accused is guilty. Whether each of the circumstances is to be proved beyond a reasonable doubt, has been a debated question. In **M.G.Agarwal v. State of Maharashtra [AIR 1963 SC 200]**, a Constitution Bench of the Apex Court held that every primary fact constituting the circumstances based on which the prosecution proposes to establish the guilt of the accused, need not be proved beyond a reasonable doubt. Therefore, the circumstances proposed by the prosecution need to be proved by the ordinary standard.

19. PW1 is the father of Smt.Lissy Thomas. PW2 was her fiance. They were cited and examined by the prosecution to prove the facts that the appellant with the help and connivance of accused Nos.2 and 3, made all efforts to continue his relationship with the deceased and for that purpose, the proposed marriage between the deceased and PW2 was thwarted. Both of them, however, did not support the case of the prosecution.

20. PW3 the manager of Chirag Hotel deposed that he found Smt.Lissy Thomas hanging from the fan in room No.6 of the hotel. He immediately informed the police and PW5 the Sub Inspector of Police, Nazarbhad Police Station, reached the spot. At his instance, the body was subjected to autopsy. The Doctor who conducted the postmortem examination was cited, but not examined as a witness in court. Ext.P10 is a copy of the postmortem examination. It was marked through PW5. PW5 is not a competent witness to prove the contents of Ext.P10. Moreover, the cause of death is an opinion to be stated by the Forensic Surgeon in the capacity of an expert in the subject. When the author of Ext.P10 was not examined, no evidence regarding the procedure of autopsy and also the opinion as regards the cause of death of Smt.Lissy Thomas has come on record. In **Sahebrao Mohan Berad v. State of Maharashtra [(2011) 4 SCC 249]** the Apex Court held that the Doctor, who examined the deceased and conducted the postmortem is the only person who can depose about the nature of injuries and give opinion about the cause of death. In this case the Doctor is not examined, and therefore, Ext.P10 cannot be used as evidence and the opinion given in it cannot be acted upon. On the basis of the fact that Smt.Lissy Thomas was found hanging from the fan using a saree alone; it cannot be concluded that her death was a suicide.

21. True, the statements in Exts.P4 and P5, if proved, would lead to an inference that Smt.Lissy Thomas has committed suicide. For that, it should be proved that Exts.P4 and P5 were written by Smt.Lissy Thomas. PW6 is the handwriting expert. He opined that the writings in Exts.P4 and P5 were that of Smt.Lissy Thomas. It may be noted that his findings are on the basis of his comparison of the questioned writings with the specimen writings supplied for comparison. But there is total lack of evidence to prove that the specimens writings provided for examination were that of Smt.Lissy Thomas. PW1 and PW2 were the witnesses competent to identify the letters used for comparison were in the handwriting of Smt.Lissy Thomas. Both of them failed to identify the handwriting in Ext.P2 letters. In such circumstances, it is not possible to say that specimen writing marked as A1, A1(a) to A1(f), A2 and A2(a) to A2(d) were written by Smt.Lissy Thomas. Therefore, the irresistible conclusion is that the prosecution failed to prove even by a preponderance of probability that the writings in Exts.P4 and P5 were written by Smt.Lissy Thomas.

22. If Exts.P4 and P5 are not proved to be in the handwriting of Smt.Lissy Thomas, there remains no evidence to prove that the death of Smt.Lissy Thomas was a suicide. The Apex Court in **Magan Bihari Lal v. State of Punjab [1977] 2 SCC 210** held that,-

“7. xx xx xx It is true that B. Lal, the handwriting expert, deposed that the handwriting on the forged Railway Receipt Ex.PW 10/A was that of the same person who wrote the specimen handwritings Ex. 27/37 to 27/57, that is the appellant, but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a hand-writing expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law.”

23. When it is unsafe to rely upon the opinion of an expert without there having any supporting evidence, the palpable nature of Ext.P6 makes the situation more worse. The only possible conclusion therefore is that the prosecution failed to establish that death of Smt.Lissy Thomas was a suicide.

24. It is seen that PW6 compared the handwritings in letters dated 04.07.1990 and 27.06.1990 with reference to his standard writings, which were marked as S3 and S3(a) to S3(k). How such specimen writings were obtained from the appellant is not known. There is absolutely no evidence regarding that fact. The Circle inspector of Police, Sri. M.Shaik Anavarudheen had forwarded the documents to the handwriting expert for comparison. But he was not examined as a witness before the court. Unless it is proved that the specimen used by the handwriting expert to compare the questioned handwritings were written by the appellant, the opinion rendered by PW6 cannot be acted upon. It may further be noted that seven letters, including the letters dated 04.07.1990 and 27.06.1990, were seized by PW9 under Ext.P17 mahazar. Regarding production of the said letters before PW9 also, there is no evidence. PW2 denied having produced any such letters in police. Thus, there is no evidence not only regarding the specimen writings purported to have been obtained from the appellant, but also the custody from where letters dated 04.07.1990 and 27.06.1990 came on record. In the said circumstances, the opinion rendered by PW6 that the handwriting in the aforesaid letters were of the appellant also cannot be acted upon.

25. On a perusal of the record of examination of the accused under Section 313(1)(b) of the Cr.P.C., it is seen that nothing regarding the contents of the proceedings in Ext.P9, P10 or P11 was put to the appellant. Ext.P9 is the inquest report prepared by PW5. Ext.P10 is the postmortem report and Ext.P11 is the report of the handwriting expert. What

is put to the appellant is that those were documents produced by the prosecution. In a criminal trial, it is essential that all the incriminating circumstances appeared in evidence are put to the accused so as to enable him to offer his explanation. The purpose of examining the accused under Section 313 of the Cr.P.C. is to meet the requirements of principles of natural justice. In **Sujit Biswas v. State of Assam [(2013) 12 SCC 406]**, the Apex Court held that no matter, how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused and to seek his explanation as regarding the incriminating materials that has surfaced against him. It is also held that the circumstances, which are not put to the accused in his examination under Section 313 of the Code cannot be used against him and must be excluded from consideration. When documents admitted in evidence contain circumstances incriminating the accused with the fact in issue or relevant facts, which would have to use to prove the charge levelled against the accused, such circumstances shall be specifically put to the accused. Merely mentioning to the accused that such a document is admitted in evidence without explaining what incriminating evidence or circumstance it contains does not satisfy the requirements of Section 313 of the Code. The incriminating circumstances contained in Ext.P9, P10 or P11 were not put to the appellant during his examination under Section 313(1)(b) of the Code, and therefore the same cannot be used against him.

26. Ext.P9 inquest report was prepared in Kannada. Ext.P7 is a copy of the F.I.R. registered by PW5 regarding the death of Smt.Lissy Thomas, which also is in Kannada. The copy of these documents were furnished to the appellant in compliance of Section 209 of the Code, but no translation either English or Malayalam was made available. The need to serve copy of the documents to the accused is to make him aware of the evidence that is proposed to be adduced against him and to enable him to defend the case properly. Section 279 of the Code insists that whenever any evidence is given in a language not understood by the accused, it shall be interpreted to him in a language understood by him. That imperates the prosecution to furnish the documents admitted in evidence in the language understood by the accused. In the case of Exts.P7 and P9 that did not happen, and therefore the same cannot be used against the appellant.

27. Thus, the evidence tendered by the prosecution does not prove none of the circumstances proposed to be proved for establishing the guilt of the appellant. The learned Sessions Judge did not consider the evidence in its proper perspective. Instead, on a peremptory consideration of the evidence, a conclusion that the appellant had instigated Smt.Lissy Thomas to commit suicide was arrived at.

28. The death of Smt.Lissy Thomas is a sad one. PW1 lost her beloved daughter. It was an unnatural death. But those are not reasons for finding a person guilty, unless the prosecution is able to prove beyond doubt that he is responsible for the death of Smt.Lissy Thomas. It is the settled law that suspicion, however, grave it may be; cannot take the place of proof. There is a total lack of proof to establish the guilt of the appellant. Therefore, I find that the conviction and sentence of the appellant are liable to be set aside. I do so. The appeal is allowed. The appellant is acquitted and he is set at liberty.