

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.591 of 2015

Dinakaran

... Appellant/2nd Accused

vs.

The State

Rep. by the Inspector of Police,

Modakurichi Police Station,

Erode District

(Crime No.83 of 2013)

... Respondent /Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the conviction and consequential sentences passed by the Sessions Judge, Magalir Needhimandram (Magalir Fast Track Court), Erode, dated 01.09.2015 made in S.C.No.22 of 2015.

For appellant : Mr.C.D.Johnsen

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

Challenge in this criminal appeal is to the conviction and sentence, dated 1.09.2015, passed in Sessions Case No.22 of 2015 by the District and Sessions Court/Mahalir Fast Track Court, Erode.

2. The case of the prosecution is that the first accused, by name, Prabakaran and deceased, by name, Michel Rajathi, have served together in Mayavar Milk dairy and both of them have loved each other and subsequently, they left their houses and started to live together in the house of one Kandammal. On 20.4.2013, the second accused has scolded the deceased by way of saying that she should commit suicide. On the same day, during evening hours, she committed suicide. After occurrence, the brother of the deceased has given a complaint against the accused and the same has been registered in Crime No.83 of 2013.

3. On receipt of complaint, the investigating officer, viz., P.W.10, has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr.Raveendran (P.W3) has conducted postmortem and he found the following external and internal injuries.

External Injury: Black discoloration of skin of width 2 cms present all around the neck except 7 cm length o the left side of back of neck.

Internal Examination: Head: Skull - intact, Brain 1100, o edematous. Neck: Skin around the neck preserved. Hyoid bone preserved. Thorax: Ribs - Intact. Lungs: Rt 359 gms, Lt 300 gms - congested. Heart: 250 gms, chambers empty. Abdomen: Stomach - Empty. Liver - 1300 gms, congested. Spleen - 120 gms, congested. Each kidney 100 gms, congested. Intestines distended with gas. Blader - empty. Uterus - Nortmal size 7X5X2.5 cms, cut section - empty, viscera preserved."

The postmortem certificate has been marked as Ex.P2.

4. The Investigating Officer, viz., P.W.10 has laid a final report on the file of the Judicial Magistrate No.3, Erode and the same has been taken on file in P.R.C.No.22 of 2013.

5. The Judicial Magistrate, No.3, Erode, after considering the facts that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Erode Division and the same has been taken on file in Sessions Case No.22 of 2015 and subsequently made over to the trial Court.

6. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed a charge against both the accused under Section 306 of the Indian Penal Code and the same has been read over and explained to them. The accused have denied the charge and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 11 have been examined and Exs.P1 to P12 and M.O.1 have been marked.

8. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9. The trial Court, after hearing arguments of both sides and also upon perusing the relevant evidence available on record, has found the first accused not guilty under Section 306 of the Indian Penal Code and ultimately acquitted him. The trial Court has found the second accused guilty under the said Section and sentenced him to undergo 10 years rigorous imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. Against the conviction and sentence passed by the trial Court, the present criminal appeal has been preferred, at the instance of the second accused, as appellant.

10. The learned counsel appearing for the appellant/second accused has contended with great vehemence to the effect that the specific case of the prosecution is that the occurrence has taken place on 20.4.2013 in the house of one Kandammal and for the purpose of proving the occurrence and also the words alleged to have been used by the second accused against the deceased, absolutely there is no evidence on the side of the prosecution and the trial Court, without considering lack of evidence with regard to the said aspect on the side of the prosecution, has erroneously invited conviction and sentence against him and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

11. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, on the side of the prosecution, sufficient evidence is available so as to prove the allegation made in the charge against the appellant/second accused and the trial Court, after considering the available evidence on record, has rightly invited conviction and sentence against him under Section 306 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are not liable to be interfered with.

12. The specific case put forth on the side of the prosecution is that both the deceased and first accused have served in a dairy farm and both of them have loved each other and subsequently, they left their respective houses and started to live in the house of one Kandammal and on the date of occurrence, the second accused, who is none other than the younger brother of the first accused, has scolded the deceased by way of saying that she is totally unfit for his brother and therefore, he directed her to go and die and subsequently, she committed suicide.

13. As rightly pointed out on the side of the appellant/second accused, for the purpose of proving the occurrence alleged to have been taken place on 20.4.2013 and also for the purpose of proving the actual words alleged to have been uttered by the second accused, no evidence is available on

the side of the prosecution. Further, on the side of the prosecution, PWs.1 to 11 have been examined and most of the witnesses have become hostile. Since most of the prosecution witnesses have become hostile and since, no piece of evidence is available with regard to occurrence alleged to have been taken place on 20.4.2013 and also with regard to the actual words alleged to have been uttered by the second accused, it is needless to say that absolutely there is no evidence on the side of the prosecution for the purpose of invoking Section 306 of the Indian Penal Code, against the appellant/second accused.

14. The trial Court, without considering the fact that there is no evidence on the side of the prosecution with regard to the allegation made in the charge, against the appellant/second accused, has erroneously invited conviction and sentence against him and in view of the discussion made earlier, this Court has found acceptable force in the contention put forth on the side of the appellant/accused and altogether, the present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The conviction and sentence passed in Sessions Case No.22 of 2015, by the trial Court, are set aside. The appellant/accused is acquitted. Fine amount, if any, paid by him, is ordered to be refunded forthwith.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To :

1. The Inspector of Police,
Modakurichi Police Station,
Erode District
- 2.The Sessions Judge, Magalir Needhimandram
(Magalir Fast Track Court), Erode
- 3.The Public Prosecutor,
High Court, Madras
- 4.The District and Sessions Judge, Magalir
Fast Track Court Erode
- 5.The District Collector Erode

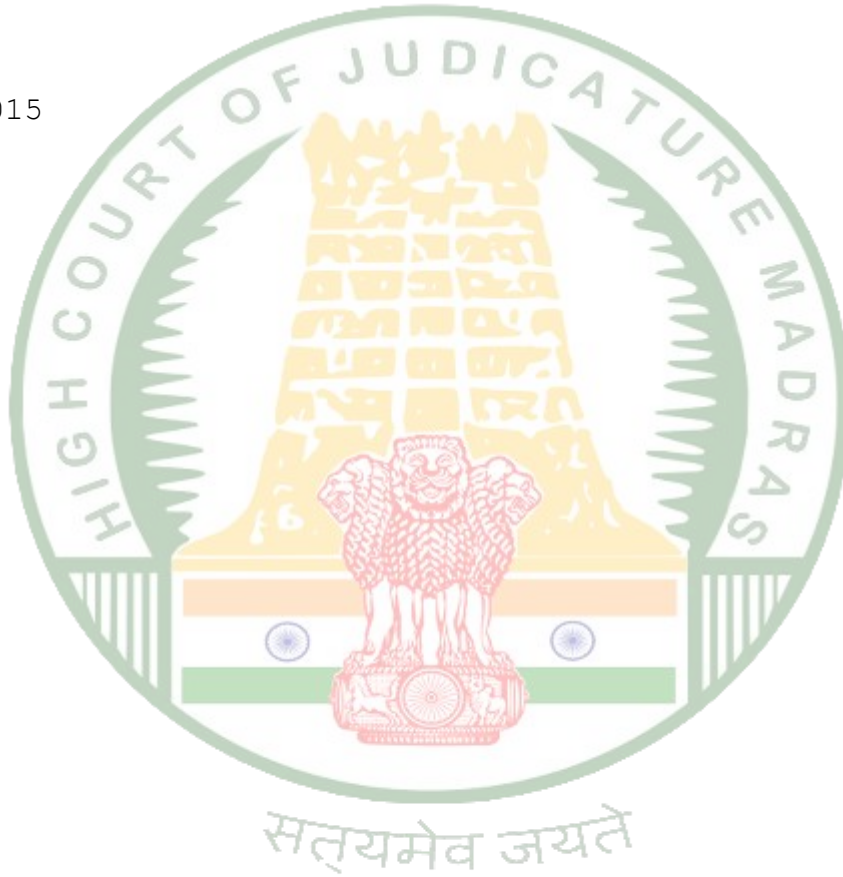
6.The Director General of Police Mylapore
Chennai-4

7.The Superintendent, Central Prison, Coimbatore
(in duplicate for communication to the accused)

+1 cc to Mr.C.D.Johnson Advocate sr.67775

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