

Bail Slip:- The Appellant/Accused Viz., Manikunjan @ Manikandan @ Karuppusamy is directed to be released on bail as per the order of this Court dated 20.1.2009 and made in CrI.M.P.No.1 of 2008 in CrI.A.No.282 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.282 of 2008

Manikunjan @ Manikandan @ Karuppusamy

... Appellant/
Accused

vs.

State by Inspector of Police,
Sirumugai Police Station
Crime No.371 of 2004
Coimbatore District

... Respondent /
Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C.,
against the judgment made in S.C.No.293 of 2006 dated 26.02.2008
on the file of the Sessions Court/Magalir Neethimadram,
Coimbatore.

For appellant : Mr.N.Manokaran

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

JUDGMENT

The conviction and sentence dated 26.2.2008 passed in Sessions Case No.293 of 2006 by the District and Sessions/Mahila Court, Coimbatore are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the accused is the husband of the deceased by name Selvi @ Chitra. On 25.10.2004, both the accused and deceased have worked in their field. At that time, the deceased has requested the accused to give necessary permission to go to her parents' house. The accused has refused her request and due to that, a tussle has arisen between them and the accused has slapped her and due to that, the deceased has consumed pesticide by name Endosulphan and subsequently she passed

away. After occurrence, the father of the deceased by name Ayyavoo, as defacto complainant, has given a complaint and the same has been registered in Crime No.371 of 2004.

3. On receipt of Complaint, P.W.8 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr.M.Thippayan (P.W.7) has conducted Post Mortem and he found the following external and internal injuries:-

" Rigourmortis passed off in all four limbs
Blebs found in upper part of the body
Injuries-1 cm x 1 cm abrasion on the left temple
L.3 cm x 3 cm abrasion on the left hip
2 cm x 2 cm abrasion on the right knee. No other external injuries seen.
Mouth - frothy discharged
Eyes partially opened
Tongue kept inside
Heart - congested - normal
Lungs - congested normal
Kidneys normal; Intestine distended with gas
Skull - bones - in tact; Brain - congested, normal
Membranes in tact;"

The Post Mortem Certificate has been marked as Ex.P.14. After completing investigation, the Investigating Officer has laid a final report on the file of Judicial Magistrate Court, Mettupalayam and the same has been taken on file in P.R.C.No.3 of 2005.

4. The Judicial Magistrate, Mettupalayam, 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, Coimbatore Division and the same has been taken on file in Sessions Case No.293 of 2006 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed a charge against the accused under Section 306 of the IPC and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 8 have been examined and Exhibits P.1 to 18 and Material Objects 1 and 2 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record has found the accused guilty under Section 306 of the IPC and sentenced him to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.500/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The consistent case of the prosecution is that the accused is the husband of the deceased. On 25.10.2004, while both of them have worked in their field, the deceased has requested the accused to give necessary permission to go to her parents' house. The accused has refused to concede the demand of the deceased and due to that, a miff has arisen and the accused has slapped her and subsequently the deceased has consumed pesticide, viz., Endosulphan and thereafter she passed away.

10. The entire case of the prosecution is based upon Ex.P.1, the Complaint alleged to have been given by the defacto complainant (P.W.1). The trial court has believed the evidence of P.W.1 and also the evidence of P.W.2, who is none other than the paternal grandmother of the deceased.

11. The learned counsel appearing for the appellant/accused has sparingly contended that the specific case of the prosecution is that the occurrence has taken place on 25.10.2004 and before occurrence, the deceased has sought permission from the accused to go to her parents' house and the same has been refused and due to that, a miff has arisen between them and the accused has slapped her. Under the said circumstances, the deceased has consumed pesticide, but to prove the said aspect, no evidence is available on the side of the prosecution and in fact P.Ws.1 and 2 have given evidence otherwise and the trial court, without considering the fact that absolutely there is no evidence on the side of the prosecution for the purpose of proving the occurrence alleged to have been taken place on 25.10.2004, has erroneously invited conviction and sentence against the appellant/accused and therefore, the conviction and sentence passed against the appellant/accused are liable to be interfered with.

12. The learned Additional Public Prosecutor has contended that in the instant case, the father of the deceased has been examined as P.W.1 and her paternal grandmother has been examined as P.W.2 and both of them have consistently stated about the cause of death and the trial court has rightly invited conviction and sentence against the appellant/accused on the basis of the evidence given by P.Ws.1 and 2 coupled with medical evidence. Therefore, the conviction and sentence passed by the trial court are not liable to be set aside.

13. As stated in many places, the specific case put forth on the side of the prosecution is that on 25.10.2004, both the accused and deceased have worked in their field and at that time, the deceased has requested the accused to give necessary permission to go to her parents' house and the same has been refused and subsequently, a miff has arisen between them and due to that, the accused has slapped the deceased and subsequently, the deceased has consumed pesticide, viz., Endosulphan and thereafter she passed away.

14. As rightly pointed out on the side of the appellant/accused, for the purpose of proving the occurrence alleged to have been taken place on 25.10.2004, absolutely there is no evidence on the part of the prosecution. It is true that P.W.1 is the father of the deceased and P.W.2 is her paternal grandmother. Both of them have spoken about some other incidence and in fact, they have not spoken about the occurrence alleged to have been taken place on 25.10.2004. Since the specific case of the prosecution is that the proximate cause for consuming poison is nothing but the occurrence alleged to have been taken place on 25.10.2004 and since absolutely there is no evidence on the side of the prosecution, it is needless to state that the prosecution has not established the alleged guilt of the accused punishable under section 306 of IPC.

15. The trial court, without considering the lack of evidence on the side of the prosecution with regard to aspect mentioned in the charge, has erroneously invited conviction and sentence against the appellant/accused under the said section. In view of the discussions made earlier, this Court has found considerable and acceptable force in the contentions 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 against the appellant/accused in S.C.No.293 of 2006 by the trial court are set aside. The appellant/accused is acquitted. Bail bond, if any executed by him shall stand cancelled. Fine amount, if any paid by him, is ordered to be refunded forthwith.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ajr

To :

1. The Sessions Court/Magalir Neethimadram, Coimbatore
2. The Inspector of Police, Sirumugai Police Station
Coimbatore District
3. The Public Prosecutor, High Court, Chennai
4. The Judicial Magistrate
Mettupalayam
5. Do thro the Chief Judicial Magistrate
Coimbatore
6. The Superintendent
Central Prison, Coimbatore

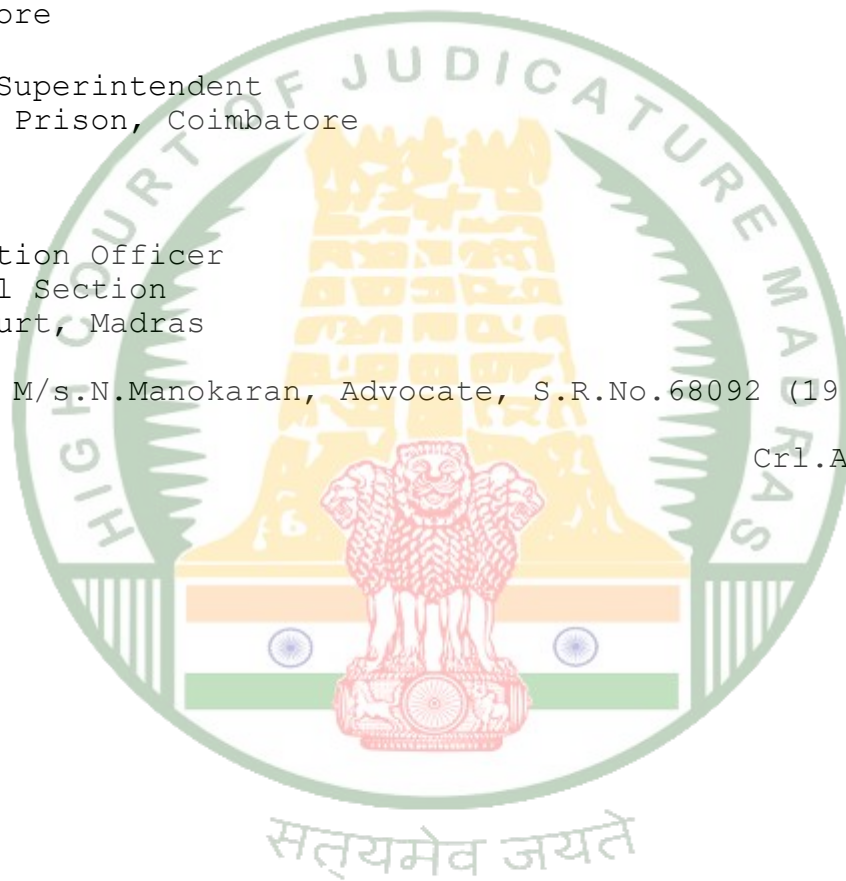
Copy to

The Section Officer
Criminal Section
High Court, Madras

+lcc to M/s.N.Manokaran, Advocate, S.R.No.68092 (19.05.2016)

Crl.A.No.282 of 2008

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