

Bail Slip

The petitioner/Accused viz., M.Arjunan, was directed to be released on bail in CrI.M.P.No. 1 of 2007 in CrI.A.No. 375 of 2007 dated 17.04.2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07-09-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.375 of 2007

M. Arjunan

...Appellant/Sole Accused

Vs.

The State rep. by its
Inspector of Police
Sivakanchi Police Station
Kancheepuram District
(Crime No.292 of 2003)

...Respondent/Complainant

Criminal Appeal under Section 374 of CrI.P.C., against the judgment passed in S.C.No.14 of 2007 on the file of the Additional Session Judge, Fast Track Court No.II, Kancheepuram dated 04-04-2007 convicting the appellant under Section 306, IPC by sentencing him to undergo a rigorous imprisonment for the period of three years and a fine of Rs.500/- and in default to undergo simple imprisonment for three months.

For appellant : Mr. M. Ravi Kumar

For respondent : Mr. P. Govindarajan, Addl.P.P.

JUDGMENT

The conviction and sentence dated 04-04-2007 passed in S.C.No.14 of 2007 by the Additional District and Sessions Court, Fast Track Court No.II, Kancheepuram are being challenged in the present criminal appeal.

2. The case of the prosecution is that on 02-11-2001, the accused has advanced a sum of Rs.80,000/- (Rupees Eighty thousand only) by way of debt to the deceased, by name, Rajagopal and to that effect, he obtained a promissory note. On 07-12-2002, the accused has demanded Rs.50,000/- (Rupees Fifty thousand only) towards interest and another Rs.50,000/- (Rupees Fifty thousand only) towards principal amount, prior to one month from 21-06-2003. On 21-06-2003, in the presence of some witnesses, the deceased has stated that he would discharge the entire amount. But, he has not been able to keep up his promise and due to the

torture of the accused on 21-06-2003, at about 23.50 hours, the deceased has committed suicide. After occurrence, one of the sons of the deceased, by name Rajendran, as defacto complainant has given a complaint and the same has been registered in Crime No.292 of 2003. The complaint alleged to have been given by the defacto complainant has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigating Officer, viz., P.W.15 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, the Doctor by name Chakravarthy, P.W.12 has conducted autopsy and he found the following external and internal injuries:

"A moderately built male body/lies in its back. .. Rigor mortis present. No external injury. Frothy white discharge from the mouth and nose present. Heard wt.350gms. Chambers empty. Rt.lung wt. 450gms. Lt.lung 400 gms. c/s congested stomach blackened muscous layer of the stomach inner side + semi digested yellowish coloured fluid 200 ml present in the stomach. The liver 1100 gms c/s, congested - Rt.Kidney 150 gms 4 kidney 150 gms c/s.congested. An old # 3" x 4" "L" shaped in the Rt. frontal bone present. No # of Base of skull. Brain 1700 gms. c/s. congested. 1. Stomach c content 2. Intestine c content 3. A Kidney 4. A portion of liver 5. Sodium Chloride solution.

... Final Opinion:

To XH No.1154/2003 dt.30/06/2003

Stomach & Intestine content: contains monocrotophos 50 ..patient died of monocrotophos - a - poisonous organo phosphorous compound."

The post-mortem certificate has been marked as Ex-P10. On completing investigation, P.W.15, has laid a final report on the file of the Judicial Magistrate-I, Kancheepuram and the same has been taken on file in P.R.C.No.9 of 2006.

4. The Judicial Magistrate-I, Kancheepuram, 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, Kancheepuram Division and taken on file in Sessions Case No.14 of 2007 and subsequently, made over to the Trial Court.

5. The Trial Court after hearing both sides and upon perusing relevant records has framed the charge against the accused under Section 306, 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 15 have been examined and Exs-P1 to 16 and M.Os.1 to 5 have been marked.

7. When the accused has been questioned under Section 313, Cr.P.C., as respects the incriminating materials available in evidence against him, he denied the complicity in the crime. No

oral and documentary evidence have been adduced on the side of the accused.

8. The Trial Court after hearing both sides and also after contemplating the evidence on record has found him guilty under Section 306, IPC and sentenced him to undergo rigorous imprisonment for the period of three years and a fine of Rs.500/- with default clause. Against the conviction and sentence passed by the Trial Court, the present criminal appeal has been preferred by the accused, as appellant.

9. The learned counsel appearing for the appellant/accused has contended that the appellant/accused has received his retiral benefits and the same has been given to the deceased and the appellant/accused has simply demanded the same. Since the deceased has not discharged his liability and no abetment has been made on the side of the appellant/accused and the Trial Court without considering the conduct of both the appellant/accused as well as the deceased, has erroneously found the appellant/accused guilty under Section 306, IPC and therefore, the conviction and sentence passed by the Trial Court are liable to be interfered with.

10. The learned Additional Public Prosecutor has contended that in the instant case, the appellant/accused has lent a sum of Rs.80,000/- (Rupees Eighty thousand only) to the deceased by way of debt and the deceased has executed a promissory note and since the deceased has not been able to discharge his liability, the appellant/accused has tortured him and due to that, he committed suicide on 21-06-2003 and for the purpose of proving torture alleged to have been committed by the appellant/accused on the side of the prosecution, P.Ws.1 to 5 have been examined and their specific evidence is that since the appellant/accused has given innumerable torture to the deceased, he committed suicide and the Trial Court also after considering the overall evidence available on record and also after considering M.O.5, letter written by the deceased has rightly found the appellant/accused guilty under Section 306, IPC and therefore, the conviction and sentence passed by the Trial Court are not liable to be set aside.

11. Basing upon the divergent submissions made on either side, the Court has to analyse as to whether the prosecution has proved the guilt of the accused punishable under Section 306, IPC beyond reasonable doubt?

12. The specific case of the prosecution is that the appellant/accused has lent a sum of Rs.80,000/- (Rupees Eighty thousand only) to the deceased, by way of getting a promissory note and since the deceased has not discharged his liability, the appellant/accused caused torture to him and under the said circumstances, he committed suicide.

13. The entire case of the prosecution is based upon M.O.5, letter alleged to have been written by the deceased wherein it has been clearly stated about the receipt of money and also torture

alleged to have been made by the appellant/ accused. Apart from contents of M.O.5, the prosecution has chosen to examine the wife, sons and daughters of the deceased as P.Ws.1 to 5 and all of them have consistently stated in their evidence about the torture alleged to have been made by the appellant/accused. Since on the side of the prosecution, the letter alleged to have been written by the deceased himself has been marked as Ex-P5 and since for the purpose of corroborating the case of the prosecution, P.Ws.1 to 5 have been examined, this Court is of the considered view that the prosecution has clearly established the guilt of the accused punishable under Section 306,IPC.

14. The learned counsel appearing for the appellant/accused has contended that the appellant/accused is aged about 78, and the Trial Court has imposed a sentence of three years' rigorous imprisonment; under the said circumstances, some leniency may be shown in awarding sentence.

15. Considering the transaction that existed in between the appellant and the deceased and also considering the age of the appellant/accused, this Court is of the view that some leniency can be shown in awarding sentence against him as stated infra:

In fine, the criminal appeal is allowed in part. The conviction passed under Section 306, IPC by the Trial Court is confirmed. However, the quantum of sentence imposed under Section 306, IPC is modified as follows:

"The appellant/accused is sentenced to undergo three months' rigorous imprisonment instead of three years."

If the appellant/accused is on bail, the Trial Court is directed to take appropriate steps so as to immure him in prison. No modification with regard to fine amount.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

glp

To

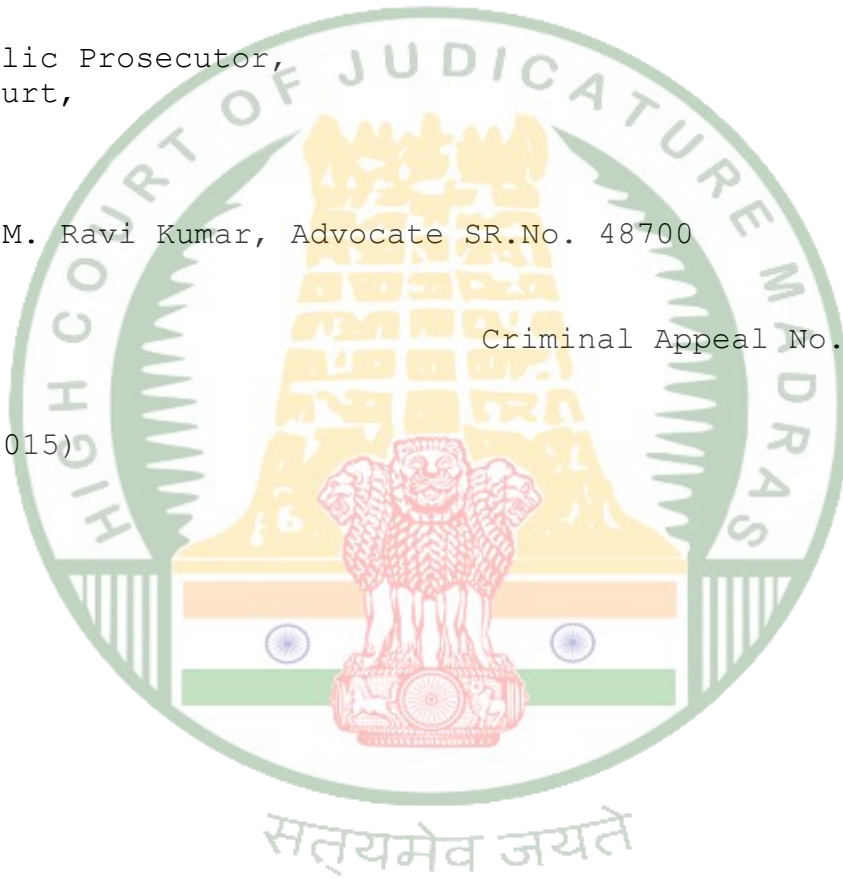
1. The Judicial Magistrate,
Alandur.
2. The Chief Judicial Magistrate,
Chengalpattu,
(For information)

3. The Inspector of Police
Sivakanchi Police Station
Kancheepuram District
4. The Additional Session Judge,
Fast Track Court No.II,
Kancheepuram.
5. The Section Officer,
Criminal Section,
High Court,
Madras.
6. The Public Prosecutor,
High Court,
Madras.

1 CC to Mr. M. Ravi Kumar, Advocate SR.No. 48700

Criminal Appeal No.375 of 2007

PUR (CO)
PSI (23.09.2015)



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