

Bail Slip

The Appellants/Accused Viz., (1) Chandran, (2) Shanthi, was directed to release on bail as per Order of this court dated 03.07.2007, in Crl.MP.NO.1 of 2007 in Crl.A.No.549 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.549 of 2007

1. Chandran

2. Shanthi

..Appellants

Vs

The State by
Assistant Commissioner of Police,
West Region, Salem Corporation,
Pallapatti Police Station,
Crime No.30/2005

..Respondent

Prayer:- This Criminal Appeal has been filed under Section 374 of the Criminal Procedure Code, to admit the appeal and set aside the conviction and sentence imposed on the appellants by the judgment dated 26.06.2006 passed in S.C.No.168 of 2006 on the file of the Sessions court, Mahila Court, Salem, by allowing the present Criminal Appeal before this Hon'ble Court.

For Appellant : Mr. I.C.Vasudevan

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

JUDGMENT

The convictions and sentences dated 26.06.2007 passed in Sessions Case No.168 of 2006 by the Mahila Court, Salem are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the second accused is wife of the brother of the first accused. The first accused has married the deceased Easwari on 16.09.2004 as per Caste Custom. At the time of marriage, she has been given 9 sovereign of gold jewels and other household articles. The first accused is having illicit intimacy with the second accused and both of them have demanded one sovereign of gold ring to the first accused from the deceased. Since the deceased has not been able to tolerate the torture given by both

accused, she committed suicide on 03.01.2005 in the house of the first accused. After occurrence, the father of the deceased as defacto complainant has given a complaint and the same has been registered in Crime No.30 of 2005. The complaint given by the defacto complainant has been marked as Ex.P.1.

3. On the receipt of Ex.P1, the investigating officer viz PW.11 has taken up investigation, examined connected witnesses and in the meanwhile, the concerned Revenue Divisional Officer (PW.8) has conducted inquest and his report has been marked as Ex.P3. The investigating officer has given a requisition for conducting autopsy on the body of the deceased and accordingly, Dr.Vallinayakam(PW.9) has conducted autopsy and he found the following external and internal injuries.

"INJURY : An oblique ligature mark present over the front and sides of neck 23 cm in length, .5 to 1 cm in width. It passes through the thyroid cartilage 4 cm below the left mostoid process, 3 cm below the right mostoid process. O/D the base of the ligature mark is pale, dry, parchment like. EXTREMITIES : Finger nail beds found bluish. HEART : Chambers and valves normal, cavities contained fluid blood. LUNGS: C/s. Congested and oedemated. HYOID BONE: Intact. STOMACH: Contained 50 ml of greenish yellow coloured fluid, no specific smell, mucosa- congested. Small Intestine : Gveyish yellow chyme present, no specific smell, mucosa - congested. LIVER, SPLEEN, KIDNEYS: All are c/s congested. BLADDER : Empty. UTERUS : Enlarged, consumption of product present. PELVIS, MEMBRANES, SPINAL COLUMN : All are intact. BRAIN : c/s. Congested. OPINION : Reserved Pending Chemical Analysis Report.

The Post Mortem Certificate has been marked as Ex.P5. After completing investigation, PW.11 has laid a final report on the file of the Judicial Magistrate No.2, Salem and the same has been taken on file in P.R.C.No.30 of 2015.

4. The Judicial Magistrate No.2, Salem, after considering the facts that the offences alleged to have been committed by both the accused are triable by Sessions Court, has committed the case to the court of Sessions and taken on file in Sessions Case No.168 of 2006 and subsequently, made over to the file of the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against both the accused under Section 498(A) of Indian Penal Code, second charge against them under Section 306 of Indian Penal Code and the same have been read over and explained to them. Both the accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, Pws.1 to 11 have been examined and Ex.P1 to Ex.P.11 and M.O.1 have been marked.

7. When the accused have been questioned under Section 313 of Criminal Procedure Code 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 let in on the side of the accused.

8. The trial court after hearing arguments on both sides and upon perusing the relevant evidence available on record has found both the accused guilty under Sections 498(A) and 306 of Indian Penal Code and sentenced them to undergo 3 years and 10 years Rigorous Imprisonment respectively with fine amount of Rs.300/- and Rs.500/-. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been preferred at the instances of both the accused as appellants.

9. The consistent case put forth on the side of the prosecution is that the first accused has married the deceased on 16.09.2004 as per Caste Custom and at the time of marriage, the parents of the deceased have given 9 sovereigns of gold jewels and other household articles. The first accused is having illicit intimacy with the second accused and both the accused have used to demand one sovereign of gold ring to the first accused and since the deceased has not been able to tolerate their torture, she committed suicide on 03.01.2005 in the house of the first accused.

10. The learned counsel appearing for the appellants/accused has contended that in the instant case, on the side of the prosecution, parents of the deceased have been examined as Pws.1 and 2 and her brother and sister have been examined as Pws.3 and 4 and one neighbour has been examined as PW.5 and all of them have not stated about the alleged demand of dowry and also alleged illicit intimacy in between the accused and the trial court without considering lack of evidence on the side of the prosecution has wrongly invited convictions and sentences against both the accused under Sections 498(A) and 306 of Indian Penal Code and therefore, the convictions and sentences passed by the trial court are liable to be set aside.

11. In order to resile the contention put forth on the side of the appellants/accused, the learned Additional Public Prosecutor has contended that the specific case of the prosecution is that both the accused have demanded one sovereign of gold ring from the deceased and further the first accused is having illicit intimacy with the second accused and only due to cruelty caused by both the accused, the deceased has committed suicide and for the purpose of proving the said aspects, on the side of the prosecution, Pws. 1 to 5 have been examined and on the basis of their evidence, the trial court has rightly invited convictions and sentences against both the accused under Sections 498(A) and 306 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial court are not liable to be interfered with.

12. For considering the divergent submissions made on either side, the court has to meticulously analyze the materials mentioned in the first charge. In the first charge, it has been clearly mentioned that the first accused is having illicit intimacy with the second accused and both of them have been demanded one sovereign of gold ring for the first accused from the deceased.

13. The entire case of the prosecution is based upon the allegations made in Ex.P.1, complaint, wherein, no specific mentions have been made with regard to alleged demand of dowry and also with regard to alleged illicit intimacy in between the accused.

14. The author of Ex.P1 has been examined as PW.1. In fact, this court has closely analyzed the evidence given by him and his specific evidence is that the deceased has reported him that very often both the accused have travelled together and also spoken together. Except, the said piece of evidence, the prosecution has not adduced any other trustworthy evidence so as to find out that both the accused are having illicit intimacy with each other. Further PW.1 has stated in his evidence that he has given assurance to give half sovereign of gold ring at the time of Deepavali and since his financial position has not permitted him to give the same, he has not given it to the first accused. As stated earlier, this court has fully analyzed the entire evidence adduced by PW.1, nowhere he stated that both the accused are having illicit intimacy with each other and both of them have demanded dowry from the deceased. Since author of Ex.P1 has not given clear evidence to the effect that both the accused are having illicit intimacy with each other and both of them have demanded dowry from her, it is highly impossible for coming to a conclusion that both the accused have committed an offence punishable under Section 498(A) of Indian Penal Code.

15. As adverted to earlier, the specific case of the prosecution is that since the deceased has not been able to tolerate the cruelty alleged to have been caused to her by both the accused, she committed suicide on 03.01.2005. It has already been pointed out even for invoking Section 498(A) of the Indian Penal Code, sufficient/acceptable evidence is not available on the side of the prosecution. Since the materials mentioned in the first charge have not at all been proved on the side of the prosecution, it is highly impossible to invoke Section 306 of Indian Penal Code against both the accused. Even at the risk of repetition, the court would like to point out that absolutely there is no evidence for coming to a conclusion that both the accused are having illicit intimacy with each other and further evidence given by PW1 and other witnesses are not at all sufficient for coming to the conclusion that both of them are having such kind of relationship. Therefore, viewing from any angle, the convictions and sentences are not factually and legally sustainable.

16. The trial court without considering lack of evidence for invoking both the sections of law has erroneously invited convictions and sentences against both the accused and therefore, the convictions and sentences passed by the trial court are liable to be set aside.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed by the trial court are set aside. Both the appellants/accused are acquitted. Bail bonds if any executed by them shall stand cancelled. Fine amount if any paid by them are ordered to be refunded forth with.

Mrp

Sd/-

Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

1. The Sessions Judge,
Mahila Court,
Salem.
2. The Public Prosecutor,
High Court, Madras.
3. The Judicial Magistrate,
NO.II, Salem
4. The Chief Judicial Magistrate,
Salem (for information)
5. The Superintendent,
Central Prison, Salem
6. The Assistant Commissioner of Police,
West Region, Salem Corporation,
Pallapatti Police Station,
Pallapatti.

+ 1 cc to M/s.I.C.Vasudevan, Advocate Sr 61855 (8/1/16)

Crl.A.No.549 of 2007

PA(CO)

sd : 25/11/2015

WEB COPY