

Bail Slip

The substantive sentence of imprisonment imposed on the petitioner/Accused namely Anbu was suspended in pursuance of the order of this court dated 24.10.2008 made in M.P.No.1 of 2008 in CrI.A.No. 748 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.748 of 2008

Anbu

...Appellant

vs.

State: rep.by the Inspector of Police,
Mecheri Police Station
Salem District

...Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed by the sessions Judge, Mahalir Court, Salem, in S.C.No.129 of 2006, by judgment dated 18.09.2008.

For appellant : Mr.B.Vasudevan

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

JUDGMENT

The conviction and sentence dated 18.09.2008, passed in Sessions Case No.129 of 2006, by the Mahalir Needhi Mandram, Salem, are being challenged in the present Criminal Appeal.

2. The crux of the case of the prosecution is that prior to four years from 16.1.2005, the first accused by name Anbu has married the deceased Malliga. After marriage, both of them have lived in the

house of the first accused. The second accused is the mother of the first accused. Since the deceased has not given birth to a child, both the accused berated the deceased and due to overt acts of the accused, on 16.1.2005, at about 17.30 hours, in an irrigation well of one Chinnapaiyan, the deceased has committed suicide. After occurrence, the father of the deceased, by name, Govindasamy, as defacto complainant, has given the complaint in question and the same has been registered in Crime No.17 of 2005. The complaint alleged to have been given by the said Govindasamy has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating officer, viz., P.W.17 has taken up investigation. In the meanwhile, the Revenue Divisional Officer, viz., P.W.13, has conducted an inquest. The Doctor, viz., P.W.7 has conducted autopsy and she found the following external and internal injuries:-

INJURIS: No antimortem injury seen anywhere in the body.

SIGNS OF DECOMPOSITION: Decomposed fluid oozing out from the mouth. Marbling with greenish black discolorisation seen on the face, chest and abdomen. Eyes-bulged. Tongue protruded out. EXTREMITIES: Finger and toe nail found bluish, washerwomen's hand and feet present. HEART: Flabby and cavity empty. TRACHEA: Trachial passage contain mud particles. HYOID BONE: Intact. STOMACH: 100 ml of greyish yellow watery fluid, no specific smell, mucosa-early decomposed. INTESTINE: Greyish yellow chyme present, no specific smell. Mucosa-early decomposed. BLADDER - Empty. Liver, SPLEEN, KIDNEYS: All are c/s early decomposed. UTERUS: Normal in size c/s cavity empty. PELVIS, MEMBRANES, SPINAL COLUMN: Intact. BRAIN - SOFTENED."

4. The postmortem certificate has been marked as Ex.P2. After completing investigation, the investigating officer has laid a final report on the file of the Judicial Magistrate Court No.2, Mettur and the same has been taken on file in P.R.C.No.29 of 2005.

5. The Judicial Magistrate, Mettur, after considering the fact that the offence alleged to have been committed by both the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Salem Division and the same has been taken on file in Sessions Case No.129 of 2006 and subsequently made over to the trial Court.

6. The trial Court, after hearing arguments of both sides and upon perusing the relevant documents, has framed a charge against the 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 against them and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 18 have been examined and Exhibits P.1 to P.12 have been marked.

8. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime.

9. On the side of the accused, D.W.1 has been examined.

10. The trial court, after hearing arguments of both sides and upon appraising the available evidence on record, has found the first accused guilty under Section 306 of the Indian Penal Code and sentenced him to undergo three years rigorous imprisonment and also imposed a fine of Rs.2000/-, 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 first accused, as appellant.

11. The learned counsel appearing for the appellant/first accused has contended that in the charge, a specific allegation has been made to the effect that one year prior to 16.1.2005, both the accused have tortured the deceased by way of saying that she has not given birth to a child and due to that, on 16.1.2005, the deceased has committed suicide by way of jumping into the well of one Chinnapaiyan, but either in Ex.P1 or in some other documents, no mention has been made to the effect that both the accused have tortured the deceased one year prior to 16.1.2005. Under the said circumstances, the first accused cannot be mulcted with liability under Section 306 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

12. The learned Additional Public Prosecutor has contended that in the instant case the parents of the deceased have been examined on the side of the prosecution and both of them have given clear evidence to the effect that both the accused have hurled invectives against the deceased and due to that she has passed away and the trial Court, after considering the available evidence on

record has rightly found the first accused guilty under Section 306 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

13. In fact, this Court has closely perused the charge framed against both the accused, wherein it has been clearly stated that one year prior to 16.1.2005, both the accused have tortured the deceased by way of saying that she has not given birth to a child and due to that she has committed suicide on 16.1.2005.

14. The prosecution has set the law in motion only on the basis of Ex.P1, the complaint alleged to have been given by the father of the deceased, wherein also no mention has been made to the effect that one year prior to 16.1.2005, both the accused have tortured the deceased by way of saying that she has not given birth to a child. But, as rightly pointed out on the side of the accused, in the charge, it has been specifically stated that one year prior to 16.1.2005, both the accused have tortured the deceased by way of saying that she has not given birth to a child. Therefore, it is quite clear that without sufficient materials, charge has been framed against both the accused. Under the said circumstances, the Court can very well come to a conclusion that the trial Court has framed the charge in question purely on the basis of mere conjecture and the same cannot be allowed.

15. The trial Court has acquitted the second accused, but however, punished the first accused under Section 306 of the Indian Penal Code.

16. As already pointed out, the entire charge has been framed against both the accused on the basis of mere surmise and conjecture and since the charge against both the accused has been framed merely on the basis of conjecture and surmise, the Court can very well come to a conclusion that sufficient materials are not available so as to come to a conclusion that only due to abetment of the first accused, the deceased has committed suicide.

17. In Ex.P1, complaint, it has been clearly stated that the first accused has met the defacto complainant and informed him about the missing of the deceased. Therefore, it is quite clear that there is no mistake on the part of the first accused and the entire charge framed against both the accused is not supported by material evidence.

18. The trial Court, without considering lack of materials,

as mentioned in the charge and also without considering the available evidence on record, has erroneously invited conviction and sentence against the appellant/first accused under Section 306 of the Indian Penal Code.

19. In view of the discussion made earlier, this Court has found considerable force in the contention put forth on the side of the appellant/accused and altogether this present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The conviction and sentence passed by the trial Court in S.C.No.129 of 2006 are set aside and 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/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

msk

To

1. The sessions Judge, Mahalir Court,
Salem
2. The Inspector of Police,
Mecheri Police Station
Salem District
3. The Judicial Magistrate No.II,
Mettur.
4. The Chief Judicial Magistrate,
Salem.

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5. The Section Officer,
Criminal Section,
High Court, Madras.

6. The Public Prosecutor,
High Court, Chennai

1 CC to Mr.B.Vasudevan, Advocate SR.No. 54437

Crl.A.No.748 of 2008

SVI (CO)
PSI (09.10.2015)



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