

BAIL SLIP

That the Appellant/Accused namely Dhanasekar was directed to be released on bail as per the order of this Court dated 20.4.2015 in Crl.M.P.No.1 of 2014 in Crl.A.No.497 of 2014.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09..06..2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.497 of 2014

Dhanasekar

... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police,
Manali Pudhu Nagar Police Station,
Tiruvallur District.
[Crime No.358 of 2012]

... Respondent/Complainant.

Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentences imposed on the appellants by the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Tiruvallur, Tiruvallur District in S.C.No.85 of 2013 dated 19.09.2014.

For Appellant : Mr.L.Mahendran

For Respondent : Mr.M.Maharaja, APP for respondents

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.85 of 2013 on the file of the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahil Court], Tiruvallur, Tiruvallur District. He stood charged for offences under Sections 302 r/w 109 and 306 of

IPC. The trial court, by judgement dated 19.09.2014, convicted the appellant under Sections 302 r/w 109 and 306 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- in default to suffer simple imprisonment for one year for offence under Section 302 r/w 109 of IPC; and to undergo rigorous imprisonment for ten years and to pay a fine of Rs.50,000/- in default to suffer simple imprisonment for one year for offence under Section 306 of IPC. Further, the trial court granted payment of Rs.75,000/- from and out of the collection of fine so imposed to the sons of the deceased couple namely, (1)Sajju and (2)Kishore as compensation under Section 357 of Cr.P.C. Challenging the above said conviction and sentences the sole accused has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased-Mr.Ramamurthy [hereinafter referred to as "D1"] and the deceased-Mrs.Bhuvana [hereinafter referred to as "D2"] were husband and wife. But, the deceased-Bhuvana [D2] had illicit relationship with the accused. This came to the knowledge of D1. D1 tried persuade D2 to discontinue the illicit relationship with the accused. But, D2 did not show any sign of change in her attitude. On 02.03.2012, during night hours, when D1 was trying to persuade D2, she told him to go and die and she would continue at any cost to have illicit relationship with the accused. D1 was provoked by the said utterances. He immediately took out a huge grinding stone and dropped the same on the head of D2. She died on the spot. Then, D1 entered into a room in the house and hanged himself. He died of hanging.

3. On these allegations, a final report was filed by the police and on taking cognizance, the committal court, prima facie, had come to the conclusion that the offence allegedly committed by the accused was under Section 306 of IPC which was triable by a court of session. According to the final report, the accused abetted the commission of suicide by D1. That is how, the committal court, committed the case to the court of session. The learned Sessions Judge, taking cognizance of the offence as required under Section 193 of Cr.P.C. made over the case to the learned Assistant Sessions Judge, Ponneri, for trial. The Assistant Sessions Judge, Ponneri, framed a lone charge under Section 306 of IPC against the accused and conducted trial.

4. The records reveal that before the learned Assistant Sessions Judge, P.Ws.1 to 6 were examined and the complaint was marked as Ex.P.1. All the said witnesses turned hostile. At that stage, a special court to deal with the cases against women was constituted at Tiruvallur and accordingly, the above said sessions case was withdrawn by the learned Sessions Judge, Tiruvallur Division, and the same was made over to the Fast

Track Mahila Sessions Court, Tiruvallur. P.Ws.7 to 12 were examined before the transferee court and Exs.P2 to P22 were marked besides 11 material objects. Hereinafter, the transferee court, for the sake of convenience, will be referred to as "the trial court". After examination of the prosecution witnesses, the accused was questioned under Section 313 of Cr.P.C. in respect of the incriminating materials on 12.08.2014. The arguments of the Public Prosecutor and the learned counsel for the accused, were heard on 19.08.2014 and thereafter, the case was adjourned for judgement.

5. At that stage, suo motu, the trial court, on 25.08.2014 framed an additional charge under Section 302 r/w 109 of IPC. According to the additional charge, the deceased-Bhuvana [D2] was killed by D1 by dropping a grinding stone on her head on the abetment made by the accused. After the alteration of the charge, the trial court ordered for de novo trial though it was not asked for either by the Public Prosecutor or by the accused. The learned Public Prosecutor as well as the learned counsel for the accused submitted to the trial court that the evidences, both oral and documentary, already let in by the prosecution could be taken into consideration and judgement could be delivered. The same was accepted by the trial court and finally, the trial court convicted the accused under both the charges. That is how, the accused is now before this court with this criminal appeal.

6. The learned counsel for the appellant/accused would point out that P.Ws.1 to 9 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.10-the Doctor, has spoken about the autopsy conducted on the body of the deceased-Bhuvana [D2] and his final opinion regarding the cause of death. He has also spoken about the autopsy conducted on the body of the deceased-Ramamurthy [D1] and his final opinion regarding the cause of death. According to P.W.10, the Doctor, the death of D2 was due to shock and haemorrhage as a result of injuries found on her body and the death of D1 was due to suicidal hanging. P.W.12 has spoken about the registration of the case and the entire investigation done by him and also the filing of charge sheet against the accused.

7. From the narration of the above facts, it is crystal clear that absolutely there is no evidence against the accused. Assuming that D1 killed his wife-Bhuvana [D2] by dropping a grinding stone on her head provoked by D2 stating that she would, at any cost, continue to have illicit relationship with accused, that would not amount to abetment within the scope of Section of 109 of IPC at all. For the words uttered by D2 that she would continue to have relationship with the accused, it is not known as to how the accused could be held responsible. How, the conduct of the accused in having illicit relationship with

D2 would amount to instigation to kill D2 is not explained. Thus, there is no scope at all to convict the accused under Section 302 r/w 109 of IPC. Apart from that, there is no evidence that D1 killed D2. Ex.P.19, the death-note does not indicate that he killed D2.

8. Now, turning to the conviction for the offence under Section 306 of IPC for abetting the suicide by D1, absolutely there is no evidence that the accused in any manner abetted the commission of suicide by D1. Above all, there is no evidence that the accused had illicit relationship with D2. The death-note which is stated to have been left behind by D1 has not been proved to be at least in his hand- writing. Thus, there is no proof of the said document. Assuming that the accused had illicit relationship with D2, it is not understandable as to how that would amount to offence of abetment for commission of suicide by D1. Thus, there is no scope to convict the accused for the offence under Section 306 of IPC also.

9. Life and liberty of an individual can be deprived of only by following the procedure established by law as guaranteed under Article 21 of the Constitution of India as a fundamental right. Fair procedure includes fair appreciation of evidence and there shall not be any conclusion arrived at against the accused solely based on mere surmises. In the instant case, the trial court has traveled beyond the scope of law and has convicted the accused only on mere surmises without understanding the implications of Sections 306 and 109 of IPC. In view of the foregoing discussions, the conviction and sentences imposed on the appellant/accused by the trial court cannot at all be sustained and so the same is liable to be set aside.

10. In the result, the criminal appeal is allowed; the conviction and sentences imposed on the appellant/accused are hereby set aside and he is acquitted of both the charges. Fine amount already paid, if any, shall be refunded to him. His bail bond shall stand terminated.

kmk

s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate II, Ponneri

2. Do thro the Chief Judicial Magistrate,
Thiruvallur.

- 3.The Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Tiruvallur, Tiruvallur District.
4. The Superintendent, Central Prison I, Puzhal, Chennai.
- 5.The Inspector of Police,Manali Pudhu Nagar Police Station, Thiruvallur District.
- 6.The District Collector, Thiruvallur District.
7. The Director General of Police, Chennai 4.
- 8.The Public Prosecutor, High Court, Chennai.

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CrI.A.No.497 of 2014



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