

BAIL SLIP

The Appellant herein namely Gobi accused in S.C.No.338 of 2006 on the file of the Mahila Court, Chennai was released on bail as per Order of this court dated 15.02.2008 and made in CrI.M.P.No.1 of 2008 in CrI.A.No.133 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.133 of 2008

Gobi

... Appellant

Vs.

State By
Inspector of Police,
P.5, M.K.B.Nagar Police Station
Chennai

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.338 of 2006 dated 19.12.2007 on the file of the Mahila Court Judge, Chennai.

For appellant : Mr.Devaraj Mahesh

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

JUDGMENT

This Criminal Appeal has been directed against the conviction and sentence dated 19.12.2007 passed in S.C.No.338 of 2006 by Mahilar Neethimandram, Chennai.

2. The case of the prosecution is that at the time of occurrence, the deceased Anitha has studied II Year B.A.Degree course in Dr.Ambedkar Government College. Both the accused and

deceased have loved each other. The accused has promised to marry her and subsequently due to poverty of the deceased, the accused has deserted her. On 7.7.2004, the accused has met the deceased in Dr.Ambedkar Government College and expressed his unwillingness to marry her and due to that, on 8.7.2004, at about 5 p.m., the deceased has committed suicide. After occurrence, the mother of the deceased by name Valarmathi, as defacto complainant, has given a complaint and the same has been registered in Crime No.455 of 2004.

3. On receipt of complaint, the Investigating Officer, viz., P.W.9, has taken up investigation, examined connected witnesses and made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr.Balasubramanian (P.W.7) has conducted autopsy and he found the following external and internal injuries:-

"An oblique incomplete brown ligature mark seen on front and sides of neck 27x3.2 cm. It is situated 8 cm below right mastoid prominence. 8 cm. above the sternal notch, and 5 cm. below left mastoid prominence. and on the back of neck, it is merged with posterior hair margin.

On dissection of skin under the ligature mark, the tissues found pale and dry. Neck structures are normal. No other external or internal injuries seen anywhere on the body

Hyoid bone - Intact

Heart . Fluid blood present in all chambers.
coronaries patent

Lungs: Multiple sub plural .. seen over surface of both lungs c/s congested

Stomach : 75 ml of brown colour fluid present

mucosa normal

Liver spleen, kidneys c/s congested

Bladder: 75 ml of Urine present

Uterus: Old healed laceration over 3'o, 5'o, 9'o, and 11'o Clock position of hymen

c/s. Uterus cavity contained copper T in situ

Brain : c/s. congested."

The Post Mortem Certificate has been marked as Ex.P.6.

4. After completing the investigation, the Investigating Officer has laid a final report on the file of X Metropolitan

Magistrate Court, Egmore, Chennai and the same has been taken on file in P.R.C.No.307 of 2004.

5. The X Metropolitan Magistrate, Egmore, Chennai, 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, Chennai Division and the same has been taken on file in Sessions Case No.338 of 2006 and subsequently made over to the trial court.

6. 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.

7. On the side of the prosecution, P.Ws.1 to 9 have been examined and Exhibits P.1 to 11 and Material Objects 1 and 2 have been marked.

8. 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.

9. The trial court, after hearing arguments of both sides and after contemplating the available evidence on record, has found the accused guilty under Section 306 of the IPC and sentenced him to undergo 5 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- 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.

10. The learned counsel appearing for the appellant/accused has sparingly contended that in the instant case, except the evidence of P.W.4, no corroborative evidence is available for the purpose of proving the occurrence alleged to have taken place on 7.7.2004 in Dr.Ambedkar Government College and the trial court, without considering lack of corroborative evidence on the side of the prosecution, has simply believed the evidence of P.W.4 and further P.W.4 is closely related to the deceased and under the said circumstances, the conviction and sentence passed by the trial court are liable to be interfered with.

11. The learned Additional Public Prosecutor has contended that P.W.4, viz., Karthick is nothing but a son of P.W.2 and P.W.2 is nothing but sister of the defacto complainant, viz., P.W.1 and even though P.Ws.1, 2 and 4 and deceased are closely related to each other, P.W.4 has given clear evidence to the effect that on 7.7.2004, during afternoon, he and his friends have practiced Coco and at that time the accused has met the deceased and both of them have made heated arguments and some of his friends have asked about the accused and he told them that both the accused and deceased are loving each other and subsequently, he and his friends have also enquired the deceased. The trial court, after considering the sole testimony of P.W.4, has rightly invited conviction and sentence against the appellant/accused under section 306 of IPC and therefore, the conviction and sentence passed by the trial court are not liable to be set aside.

12. On the basis of the rival submissions made on either side, the court has to meticulously analyze as to whether the evidence given by P.W.4 would be sufficient for coming to a conclusion that the occurrence alleged to have taken place on 7.7.2004 would be the immediate cause for committing suicide.

13. It is an admitted fact that P.W.4, viz., Karthick is a related witness. Since he is a related witness, his evidence should be analyzed meticulously. In the chief examination, he has stated to the effect that on 7.7.2004, at about 2.45 p.m., he and his friends have practiced Coco and at that time, both the accused and deceased have talked together and some of his friends have asked him about the accused and he told that both the accused and deceased are loving each other. Further, he would say in his evidence that after some time, the accused has left the place and subsequently he and his friends have met the deceased and she told that the accused has expressed his unwillingness to marry her.

14. In the instant case, except ipse dixit of P.W.4, as rightly pointed out on the side of the appellant/accused, no corroborative evidence is available with regard to occurrence alleged to have been taken place on 7.7.2004. If really such occurrence has taken place and friends of P.W.4 have enquired about the accused, definitely friends of P.W.4 would have been examined as prosecution witnesses. But, as pointed out earlier, the prosecution has not chosen to examine any one friends of

P.W.4 for the purpose of proving the occurrence alleged to have been taken place on 7.7.2004. Further, on the side of the prosecution, no document has been produced for the purpose of establishing that on 7.7.2004, P.W.4 has studied in Dr.Ambedkar Government College.

15. Considering the close relationship between the deceased and P.W.4 and also considering that for the purpose of corroborating his evidence, no witnesses have been examined on the side of the prosecution, his sole testimony cannot be a basis for coming to a conclusion that such occurrence has taken place on 7.7.2004.

16. As per the version of the prosecution, the immediate cause for committing suicide is nothing but the occurrence alleged to have been taken place on 7.7.2004 at about 2.45 p.m in Dr.Ambedkar Government College, but to prove the same, as taunted earlier, no corroborative evidence is available on the side of the prosecution and further considering the close relationship between the deceased and P.W.4, his evidence cannot be relied upon.

17. The trial court, without considering the above factual aspects, has erroneously invited conviction and sentence against the appellant/accused and in view of the discussions made earlier, this Court has found 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.338 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/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ajr

To

1. The Mahila Court Judge,
Chennai
2. The Metropolitan Magistrate No.X,
Egmore, Chennai.
3. The Chief Metropolitan Magistrate,
Egmore, Chennai.
4. The Inspector of Police,
P.5, M.K.B.Nagar Police Station
Chennai
5. The Superintendent,
Central Prison,
Puzhal, Chennai.
6. The Public Prosecutor,
High Court, Chennai

+lcc to Mr.Devaraj Mahesh, Advocate, S.R.No.3065

Crl.A.No.133 of 2008

KGK(CO)
CA(27/01/2016)



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