

Bail Slip:- The Appellant/Accused Viz., Rajendran aged about 39 years S/o. Subraya Gounder was directed to be released on bail as per order of this court dated 16.2.2007 in M.P.No.1 of 2007 in CrI.A.NO.167 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.A.No.167 of 2007

Rajendran ... Appellant/Accused

Versus

State represented by
The Inspector of Police,
Attur - All Women Police Station,
Salem District.
(Crime No.315 of 2003) ... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C to set aside the Judgment and Conviction passed by the learned Sessions Judge, Mahila Court, Salem in S.C.No.85 of 2006 dated 25.01.2007 and acquit the appellant.

For Appellant : Mr.T.R.Ravi

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

The sole accused in the Sessions case in S.C.No.85 of 2006 on the file of the learned Additional Sessions Judge, Mahila Court, Salem, is the appellant.

2. In the Trial Court, he was tried for an offence under section 307 IPC. The Trial Court, while acquitting him from the said charge, convicted him under section 336 IPC and sentenced him to 3 months R.I. and fined him Rs.500/- i/d 1 month S.I. He has paid the fine amount.

3. The case of the prosecution in brief runs as under :

[i] The accused and P.W.1 are spouses. Due to the wayward behaviour of the accused, the spouses are living apart. In the circumstances, on 6.6.2003, P.W.1 visited Veerakoundanoor in connection with the death of a common relative. The accused also came there. At about 10 p.m., the accused attempted on her life by strangulating her. However, she had providential escape. It was witnessed to by P.Ws. 2 to 5.

[ii] On 15.6.2003, at about 10.30 a.m., at the Ethapur Police Station, P.W.1 gave Ex.P.1 complaint to P.W.7 Inspector. He registered this case (Ex.P.4 F.I.R.). He took up the investigation. Visited the scene place. Prepared Ex.P.3 Observation Mahazar in the presence of P.W.6 and another witness. He drew Ex.P.5 Rough Sketch of the scene place. He examined the witnesses and recorded their statement. On 16.6.2003, at about 10.30 a.m., at the Veerakoundanoor branch road, he has arrested the accused. Produced him before the jurisdiction Magistrate, who remanded him to judicial custody. Thereafter, P.W.8 Inspector continued the investigation. Concluding her investigation, she filed the Final Report in this case for an offence under section 307 IPC before the concerned Court.

4. After complying the formalities under section 207 Cr.P.C. and on committal under section 209 Cr.P.C., the Trial Court considering the submissions of both sides and after perusing the case records framed a charge under section 307 IPC as against the accused. The accused pleaded not guilty to the charge.

5. In the circumstances, the prosecution examined P.Ws.1 to P.W.8 and marked Ex.P.1 to P.5.

6. When the accused was examined under section 313 Cr.P.C on the incriminating information in the prosecution evidence, he denied the offence. He did not let in any defence evidence.

7. As already stated, the Trial Court had convicted and sentenced him under section 336 IPC.

8. It has been contended by the learned counsel for the appellant, that there is 9 days delay in lodging the F.I.R. No explanation for the delay. P.W.1 is having strong motive towards her husband. The eye witnesses are

all closely related to P.W.1. The available independent witnesses were excluded. An offence under section 336 IPC has not been established by the prosecution beyond all reasonable doubts.

9. On the other hand, it has been contended by the learned Additional Public Prosecutor that P.W.1 is the eye witness, author of F.I.R. and she is also the injured. Her evidence has been corroborated in material particulars by other eye witnesses. In the circumstances, on the proved offence, namely, an offence under section 336 IPC, the Trial Court has rightly convicted and appropriately punished him.

10. I have anxiously considered the rival submissions, perused the Trial Court's judgment and the entire materials on record.

11. Now the question is whether the prosecution has established an offence under section 336 IPC as against the accused beyond all reasonable doubts.

12. The accused and P.W.1 are spouses. P.W.1 suspected his fidelity towards her. Due to difference of opinion, they are living separately.

13. In this back drop of the matter, on 6.6.2003, at about 10 p.m., in Veerakoundanor, P.W.1 has to see her husband in a death ceremony. There, according to P.W.1, he had strangled to kill her. P.Ws.2 to 4 are stated to be the eye witnesses to this occurrence.

14. P.W.1 has strong enmity towards her husband. She is not prepared to spare him because he had shifted his love and affection to some other woman. Bad blood was brewing between them. Thus with much care and caution, her evidence has to be approached. P.Ws.2 to 4 are her brother, brother, mother and brother respectively. P.W.5 is the wife of P.W.4. They are close relatives of P.W.1. As per the prosecution there were independent witnesses to the occurrence. But, none of them were examined. In such circumstances, extreme care and caution is required in evaluating their testimony.

15. In his cross examination, P.W.2 had admitted that he came to the scene place after the occurrence. P.W.4 stated that he has witnessed the whole occurrence. However, his mother P.W.3 had stated that P.W.4 had came to

the scene place after the occurrence. P.W.5 admitted that she has not seen the occurrence. P.W.3 is also not consistent in her evidence.

16. Ex.P.1 is the complaint lodged by P.W.1. She did not suffer any injury in the occurrence. There is no medical evidence. The occurrence was on 6.6.2003. The police station is not far away. However, only after 9 days, Ex.P.1 complaint was lodged by her with the police. It is not that because of delay in lodging the F.I.R., the prosecution case has to be thrown out. But when the delay remain unexplained, the veracity of the evidence of the witnesses is open to doubt. The principle that there should not be any delay in lodging the F.I.R. is to prevent embezzlement of truth, introduction of any story telling and it is to bring the earliest version in its true perspective to the notice of the law enforcing authorities. Even if there is delay, there must be some acceptable, plausible explanation, as to why this delay. But in this case, no such explanation for the huge delay of 9 days in lodging the F.I.R. In such circumstances, the prosecution version and the testimony of P.W.1, who is already inimical towards her husband undoubtedly is doubtful.

17. Now, in this perspective of the matter, this Court has no hesitation to hold that the prosecution has failed to establish even an offence under section 336 IPC as against the accused beyond all reasonable doubts.

18. In view of the foregoings, this criminal appeal is allowed. The conviction under 336 IPC and the sentence awarded to the appellant are set aside. He is acquitted. The fine amount shall be refunded to him. The bail bond executed by him shall stand cancelled.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Judicial Magistrate I
Attur
2. The Chief Judicial Magistrate
Salem

3. The Sessions Judge,
Mahila Court,
Salem.

4. The Additional Public Prosecutor,
High Court, Madras.

5. The Inspector of Police,
All Women Police Station,
Attur,
Salem District.

Copy to :

1. The Secretary,
High Court Legal Services Committee,
High Court,
Chennai - 104.
2. Mr.T.R.Ravi,
Advocate,
No.359, Additional Law Chambers,
High Court, Madras.

1 cc to Mr.T.R. ravi, Advocate, Sr. 15637

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