

Bail Slip

Appellants / in Crl. A 488/2008 and (Accused 1 and 2 in S.C.NO.183/2006 dated 18/2/2008 on the file of the Sessions Judge of Mahila Court at Coimbatore) were released on bail as per order of this court dated 12/1/2009 in Crl M.P.No.1 of 2008 in Crl. A ;No.488/2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20-01-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.488 of 2008

1. Devaraj
2. Ananthakrishnan ... Appellants/Accused 1 and 2

Vs.

State by:

Deputy Superintendent of Police

Tiruppur Sub-Division

Coimbatore District

(Crime No.881 of 2008) ... Respondent/Complainant

Criminal Appeal under 374(2), Cr.P.C., against the judgment of the District and Sessions Judge of Mahila Court at Coimbatore made in S.C.No.183 of 2006 dated 18-02-2008 convicting the appellants under Section 306 and 498-A, IPC and sentencing them to undergo Ten years R.I also pay a fine Rs.2,000/- in default for a further period of one year for the offence under Section 306, IPC and to undergo two years and to pay a fine of Rs.500/- each in default to undergo simple imprisonment for three months and all the sentence shall run concurrently.

For appellants :: Mr. R. Rajasekaran

For respondent :: Mr. P. Govindarajan, Addl.P.P

JUDGMENT

The convictions and sentences dated 18-02-2008 passed in Sessions Case No.183 of 2006 by the District and Sessions Court/Mahila Court Coimbatore are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the accused are brothers. The first accused has married the deceased Chithra prior to two and a half years from the date of occurrence and both of them have been blessed with a child. The first accused is a drunkard and very often in drunken mood, used to attack the deceased. The second accused being younger brother of the first accused has lent his support to the first accused. On 21-08-2003 at about 12:30 p.m., the deceased has committed suicide in the house bearing Door No.37, Sadaiyappan Koil Street, Tiruppur. After occurrence, the father of the deceased has given a complaint and the same has been registered in Crime No.81 of 2003.

3. On receipt of the complaint, the Investigating Officer viz., P.W.8 has taken up investigation, examined connected witnesses and also made arrangements to conduct inquest and accordingly, the concerned Revenue Divisional Officer viz., P.W.6 has conducted inquest and filed his report. The Investigating Officer has made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr. Somasundaram, P.W.5 has conducted autopsy and he found the following external and internal injuries:

"The body was first seen by them at 3:10 p.m. on 22-08-2003. While so its condition show Rigor mortis present in all the four limbs. Symmetrical. The general condition tally with Police report. The Rigor mortis present in all the four limbs. Over all expression of the face swollen. Eye lids swollen and closed. Sub-conjunctival Haemorrhage seen. Nose bleedings. Tongue kept inside, jaw clenched. Facial matter comes out. Over all expression Ligature mark start from Rt upper neck 7 cm below and 5 cm behind (right) Ear lobe, runs upwards above, the thyroid cartilage ends, 3 cm left earlobe. Max of 3 cm right side minimum 1.5 cm left side skin over ligature light brown cut section - sub cutaneous also congested, muscle, vessel congested. Abdomen - distended, not touching ribs, Heart- 50 ml & clotted blood. The right and left legs congested. The intestine digested with Gas, Bladder empty, Uterus empty, Skull - No fracture of bone. Membranes intact, Brain congested. The skin and underlying tissue, Hyoid bone were preserved and sent for analysis.

Opinion: The deceased would have died of Asphyxia due to the external compression of the neck."

The post-mortem certificate has been marked as Ex-P3. After completing investigation, P.W.8 has laid a final report on

the file of the Judicial Magistrate Court No.I, Tiruppur and the same has been taken on file in P.R.C.No.1 of 2015.

4. The Judicial Magistrate No.I, Tiruppur, 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 the same has been taken on file in Sessions Case No.183 of 2006.

5. The Trial Court after hearing arguments of both sides and upon perusal of the relevant records has framed a charge against the accused under Sections 498-A read with 34, IPC and 306 read with 34, IPC and the same has been read over and explained to them. The accused have denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 8 have been examined and Exs-P1 to P6 and M.O.1 have been marked.

7. When the accused have been questioned under Section 313, Cr.P.C., 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 of both sides and upon perusing the relevant evidence available on records has found both the accused guilty under Section 498-A, IPC and sentenced them to undergo two years' R.I., and imposed a fine of Rs.500/- (Rupees Five Hundred Only) each, with usual default clause. Further, they have also been found guilty under Section 306 read with 34, IPC and sentenced them to undergo 10 years' R.I., and imposed a fine of Rs.2000/- (Rupees Two thousand only) each, with usual default clause. Against the convictions and sentences passed by the Trial Court, the present Criminal Appeal has been preferred at the instance of the accused, as appellants.

9. The learned counsel appearing for the appellants/accused has raised the following points:

(a) After registration of the FIR, P.W.6, the Revenue Divisional Officer has conducted inquest on 22-08-2013 and he examined P.Ws.1 to 3 and none of them has stated anything about the overt acts of the accused and subsequently, P.Ws.1 to 3 have improved the case of the prosecution and the Trial Court has failed to consider the same.

(b) Ex-P13, complaint has been registered on 21-08-2003. But, reached the Court on 25-08-2003 and therefore, the same is a concocted document.

10. The learned Additional Public Prosecutor has contended that the mother of the deceased has been examined as P.W.1, younger sister of the deceased has been examined as P.W.2 and her uncle has been examined as P.W.3 and all of them have consistently stated in their evidence about the habit of the first accused and also torture alleged to have been caused by him to the deceased and since on the side of the prosecution enormous evidence has been adduced, for the purpose of proving the alleged torture given by the first accused, the Trial Court has rightly found both the accused guilty under Sections 498-A and 306,IPC and therefore, the convictions and sentences passed by the Trial Court are not liable to be set aside.

11. Before analyzing the alleged culpability of the first accused, the Court has to meticulously analyze as to whether the second accused has committed offences punishable under Sections 498-A and 306, IPC.

12. It is an admitted fact that the second accused is the younger brother of the first accused. The specific contention put forth on the side of the prosecution is that the second accused has given his support to the first accused at the time of torturing the deceased. In fact, this Court has analyzed the entire evidence given by P.Ws.1 to 3 and none of them has stated the overt acts alleged to have been committed by the second accused. Since on the side of the prosecution absolutely there is no evidence against the second accused, it is very clear that the second accused has been unnecessarily implicated in the present case. The Trial Court without considering lack of evidence on the side of the prosecution against the second accused has erroneously invited convictions and sentences against him under the said Sections. Therefore, the convictions and sentences passed by the Trial Court against the second accused are liable to be interfered with.

13. Now, the Court has to look into the contentions put forth on the side of the prosecution against the first accused. The specific allegation made against the first accused is that he is a drunkard and in sozzle mood, very often used to attack the deceased and since the deceased has not been able to tolerate the torture given by the first accused, she committed suicide.

14. As mentioned supra, the mother of the deceased has been examined as P.W.1, her younger sister has been examined as P.W.2 and her uncle has been examined as P.W.3 and all of them have cogently stated about the conduct of the first accused and also torture caused by him to the deceased. Considering the fact that P.Ws.1 to 3 are closely related to the deceased and also considering that P.Ws.1 to 3 have given trustworthy evidence

with regard to torture alleged to have been committed by the first accused, the Court can very well come to a conclusion that the first accused has tortured the deceased and only due to his torture, she committed suicide.

15. The first and foremost contention put forth on the side of the appellants/ accused is that in the Inquest conducted by the Revenue Divisional Officer viz., P.W.6, P.Ws.1 to 3 have not stated about the torture alleged to have been committed by the first accused. It is true that P.Ws.1 to 3 have not stated about the conduct as well as torture of the first accused to the Revenue Divisional Officer. At the same time, the Court has to look into Ex-P13, complaint, wherein it has been clearly stated about the conduct of the first accused and also torture committed by him. Simply because in the inquest conducted by P.W.6, P.Ws.1 to 3 have not stated anything about the conduct as well as the torture of the first accused, the Court cannot ignore the materials found in Ex-P13. Therefore, the first contention urged on the side of the appellants/accused is sans merit.

16. The second contention put forth on the side of the appellants/accused is that Ex-P13 has been registered on 21-08-2003. Whereas it has reached the Court on 24-08-2003 and therefore, the same is nothing but concoction.

17. It is seen from Ex-P13 that it has been registered on 21-08-2003, but after three days, it has reached the Court on 24-08-2003. Simply because Ex-P13 has reached the Court belatedly, the Court cannot reject the case of the prosecution. Further, in this case, cogent and trustworthy evidence is available for the purpose of proving the conduct as well as torture of the first accused. Under the said circumstances, the second contention put forth on the side of the appellants/accused cannot be accepted.

18. Now, the Court has to look into the quantum of sentence awarded under Section 306, IPC against the first accused. It is seen from the records that at the time of committing the offences, the first accused is aged about 32 years and also father of a female child. Considering the age of the first accused and also considering that he is having a female child, some leniency may be shown in awarding sentence under Section 306, IPC. Further, it has already been pointed out that the convictions and sentences passed by the Trial Court against the second accused are totally unwarranted and the same are liable to be set aside and to that extent, this Criminal Appeal is liable to be allowed in part.

In fine, this criminal appeal is allowed in part.

(i) The convictions and sentences passed by the Trial

Court against the second accused are set aside. The second accused is acquitted. Bail bonds, if any, executed by him shall stand cancelled. Fine amount, if any paid by him is ordered to be refunded forthwith.

(ii) The conviction and sentences passed against the first accused under Section 498-A r/w 34, IPC are confirmed. Likewise, the conviction passed under Section 306 r/w 34, IPC against him is also confirmed. However, the quantum of sentence imposed against him under the said Section is modified as follows:

"The first accused is sentenced to undergo five years' R.I., instead of ten years. No modification in respect of fine amount."

If the first accused is not in duress, the Trial Court is directed to take appropriate steps to immure him in prison to serve out the remaining period of sentence.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No. I,
Tiruppur.
2. -Do- Thro The Chief Judicial Magistrate,
Coimbatore.
3. The Sessions Judge, Magalir Neethimandram,
Mahila Court,
Coimbatore.
4. -do- Thro The Principal Sessions Judge,
Coimbatore.
5. Deputy Superintendent of Police
Tiruppur Sub-Division
Coimbatore District
6. The Superintendent Central Prison,
Coimbatore.

7.The Public Prosecutor,
High Court,
Madras.

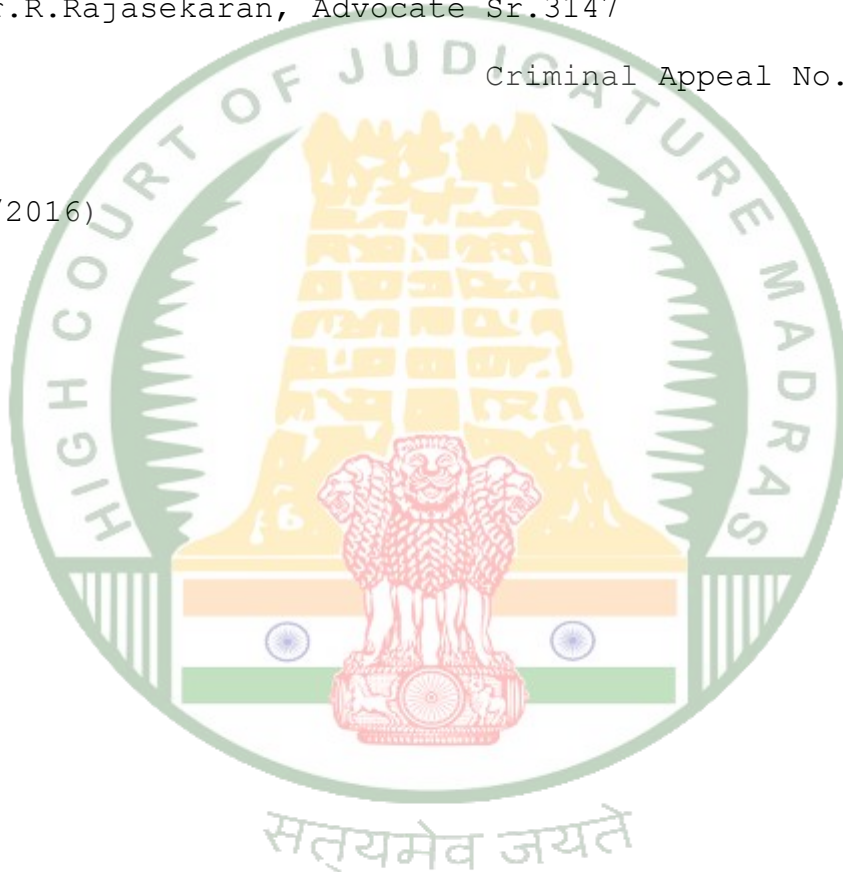
8.The District Collector,
Coimbatore.

9.The Director General of Police,
Mylakpure,
Chennai 600 004.

+lcc to Mr.R.Rajasekaran, Advocate Sr.3147

Criminal Appeal No.488 of 2008

tej (CO)
srg (27/01/2016)



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