

BAIL SLIP

Veeramuthu

Appellant/Accused

The above said appellant/Accused was directed to be released on bail as per order of this court dated 14.02.2014 made in MP.No. 1/2014 in Crl.A.No. 576 of 2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2019:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Criminal Appeal No.576 of 2008

Veeramuthu

..... Appellant

Vs

State by
Sub-Inspector of Police,
Valparai Police Station,
Coimbatore District.
Cr.No.106 of 2006

..... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure code, to call for the records of the Sessions Judge, Mahalir Neethimandram, Coimbatore in S.C.No.335 of 2006 and set aside the conviction and sentence in his order dated 08.07.2008 and acquit the appellant herein.

For Appellant : Mr. C.Venkatesan

For Respondent : Ms.P.Kritika Kamal
Government Advocate

J U D G M E N T

The Appellant is the sole accused in S.C.No.335 of 2006 on the file of Sessions Judge, Mahalir Neethimandram, Coimbatore, wherein, as many as 3 charges were framed against the accused as detailed below.

Name of the accused	Charges framed against the accused
Veeramuthu	Under Sections 376(1), 506(2) and 306 of IPC.

2. After full-fledged trial, the learned Sessions Judge convicted the accused and sentenced him as follows:-

Veeramuthu	● Sentenced to undergo Rigorous Imprisonment for 10 years with fine of Rs.1,000/- IDSI for 6 months for the offence under Section 376(1) of IPC. ● Sentenced to undergo Rigorous Imprisonment for 10 years with fine of Rs.1,000/- IDSI for 6 months for the offence under Section 306 of IPC. ● Sentenced to undergo Rigorous Imprisonment for 3 years with fine of Rs.500/- IDSI for 3 months for the offence under Section 506(2) of IPC.
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3. Aggrieved by the conviction and sentence, the appellant is before this Court with the present Criminal Appeal.

The Case of the prosecution in brief is as follows:-

(a). The accused Veeramuthu is a Poojari by his profession who is a practitioner and specialist in curing the bad spiritual force from the human body. He was residing at Soodakattupaddi, Akamali Estate, Second Division, Valparai.

(b) P.W.1 Madasamy and his wife Shanmugasundari @ Jakkammal were the workers of the Akkamalai estate. Since, P.W.1's wife Shanmugasundari @ Jakkammal (herein after referred to as the "deceased") was hopefully affected by bad spiritual effect, P.W.1 took the deceased to the accused (Veeramuthu) for performing some Pooja for leaving the bad spiritual force from her body. After performing pooja by the accused, the deceased became perfect. During the last week of April 2006, since the deceased Shanmugasundari was once again affected by bad spiritual force, P.W.1 again took his wife Shanmugasundari to the accused. While so, the accused stated that the deceased was affected by the bad evil spiritual force. In order to

cure the bad spiritual effect, the accused charged Rs.800/- to perform pooja and the deceased became alright due to the effect of the pooja. In the meanwhile, the deceased Shanmugasundari attended Muneswaran Temple Festival and participated in the free meal distribution to the devotees. The accused, who distributed the meal had met the deceased Shanmugasundari and asked her to participate in the pooja namely (Vethalai Kallipu) as the deceased is in need of the same. As per the instructions, the

deceased Shanmugasundari went to the house of the accused on 04.05.2006 at 10.00 a.m., situated at Soodakattupaddi, Akkamalai Estate, Second division. Taking advantage of the lonely presence, the accused had forcible sexual intercourse with the deceased Shanmugasundari against her will and without her consent and with compulsion. The deceased Shanmugasundari was crying for the misdeeds. Thereafter, the accused threatened the deceased with dire consequences to cause death to her and also threatened to spoil the family members with the evil force.

(c) On 10.05.2006, the deceased being ashamed of the sexual assault caused by the accused and due to the mental agony and threatening, the victim Shanmugasundari had committed suicide by pouring kerosene and by setting fire on her body. She died on the spot instantaneously due to shock and due to extensive burns.

(d) On 10.05.2006 at 08.30 a.m., P.W.5 Paramasivam, the watchman, working in the Akkamalai estate was on duty at the first division of Akkamalai estate. During that time, one Anandaraj informed about the fire accident took place at the house of P.W.1. P.W.5 immediately informed the same to the Field Officer of the Akkamalai Estate and as required by the Field Officer, one Anandaraj along with Field officer went to the scene of occurrence and found the deceased Shanmugasundari was lying in the floor of the house with extensive fire burns over the body and also found her dead. The Field Officer had informed the fire incident to the Manager of the estate over phone, who (Manager) in turn informed the same to the Police. The incident, was also informed to P.W.1/husband of the deceased and also to the committee members. On the instruction of the estate committee members, on 10.05.2006 at 12.15 Noon, P.W.1 went to Valparai Police station and lodged a complaint against the accused. Based upon the complaint/Ex.P.1, P.W.10 (Rajendran), the Sub-Inspector of Police, Valparai registered a case in Crime No.106/06 under Sections 376 and 306 of the Indian Penal Code (herein after referred as "IPC") and forwarded First Information Report (Ex.P8) along with Ex.P1 (complaint) to the Court through Head Constable 1963. P.W.10 also forwarded the copy of the First Information Report to the Inspector of Police for further investigation.

(e) On 10.05.2006 at 15.00 hours, P.W.12 (Mr.Palaniappan), the Inspector of Police, Sithodu took up the case for investigation. On the same day, at 16.00 hours, he went to the scene of occurrence and observed the occurrence in the presence of the witnesses P.W.7 (Saravanan) and Anandaraj and prepared an Observation Mahazar (Ex.P6) and obtained signature of the witnesses there on. He also prepared a rough sketch (Ex.P11) about the scene of occurrence. On the same day, at 16.45 hours,

P.W.12 seized material objects namely (i).M.O.1-plastic can, (ii). M.O.2 - burnt cloths, (iii). M.O.3 - Brass light and (iv). M.O.4-Burnt conditioned Umbrella in the presence of the witnesses P.W.7/Saravanan and Anandaraj under Ex.P5 (Seizure Mahazar) and obtained signature of the witnesses thereon.

(f) Soon after the completion of the inquest, M.O.5 silver leg anklets, M.O.6 Side Ear Golden stud, M.O.7 Golden Nose stud, M.O.8 Brass Ear Stud, M.O.9 Burnt brass chain and M.O.10 Broken brass ring were removed from the dead body of Shanmugasundari and the same were handed over to P.W.9 (Head Constable). The Head Constable in turn handed over the same to the Inspector of Police (P.W.12).

(g) P.W.12 recovered M.O.5 to M.O.10 under Form 95 and forwarded the same to the Court. Thereafter, P.W.12 conducted inquest over the dead body of the deceased in the presence of mediators and witnesses namely 1.Jayabal, 2.Velusamy, 3.Marimuthu, 4.Manokaran, P.W.5 (Paramasivam), P.W.2 (Parimalam) and one Gunasekaran and recorded their statements. P.W.12 also examined the witnesses namely P.W.7 (Saravanan), Anandaraj, Ramarpandi and recorded their statements. In order to find out the topographical details of the scene of crime and to show the real position of the dead body, P.W.12 deputed a photographer to take photos. P.W.11/Kumar (Photographer) in his evidence has deposed that on 10.05.2006 at 12.00 noon on the instructions of the Inspector of Police, Valparai, he took photos over the dead body of the deceased in two angles. He also taken photos of the scene of crime. P.W.12 received Ex.P.9 (Photographs) along with Ex.P10 (Negative) from P.W.11 and recorded statement of P.W.11.

(h) On 11.05.2006 at 11.00 a.m, P.W.12, the Inspector of Police arrested the accused near Karumalai Bazaar Bus stand. When the accused was in the custody of P.W.12, he interrogated the accused in the presence of Ramar and P.W.8 (Oorkavalan). The accused voluntarily confessed about the commission of crime and he reduced the same into writing and P.W.12 obtained the signature of the accused thereon. He also obtained the signature of the witnesses in the confession statement, thereafter, he returned to the Police Station. After complying necessary formalities, P.W.12 sent the accused to the Court for remand.

(i) Soon after the completion of the inquest, P.W.12 handed over the dead body of Shanmugasundari to P.W.9 (Mr.V.Shankar) along with a requisition letter to the Medical Officer, Government Hospital, Valparai to conduct autopsy over the body of the deceased.

(j) On 10.05.2006 at about 05.45 p.m., P.W.9 Shankar, Head constable 1812 handed over the requisition letter to P.W.4

(Dr.Selvaraj) attached to the Government Hospital, Valparai to conduct autopsy over the dead body of the deceased. On receipt of requisition from P.W.9, the autopsy was not conducted on the same day.

(k) On 11.05.2006 at 10.30 a.m., P.W.4 conducted autopsy over the dead body of the deceased and noted the following injuries:

" A body of a female aged about 28 years lies on back with froth discharge present both nostrils with full of extensive burns all over the body charred head, face, neck, chest, abdomen both upper and lower limbs. Skin burnt completely 100%."

Opening of Thorax and abdomen:

" Heart - weight 200 gm valves contracted. Chambers contains fluid blood. Vessels normal.

Lungs - weight 500 gm. 500 Lt 400 gms. Lungs congested. Hyoid bond in tact.

Stomach weight 200 gm empty.

Liver wt.1500 gm. Firm smooth Surface c/s congested.

Spleen weight 200 gm. Firm smooth C/s congested.

Kidney weight 30 gm both c/s congested.

Bladder empty.

Uterus normal cavity empty.

Head No fractures. No injuries.

Skull no fractures.

Brain wt. 1200 gm. Substance soft vessels normal.

Spinal cord normal. To that effect P.W.4 issued Ex.P3 Postmortem certificate."

He opined that the deceased would have appeared to have died of shock due to extensive burns. Ex.P4 is the opinion given by P.W.4.

(l) On 12.06.2006 at 10.00 p.m., the accused was brought by the Head Constable 1246 Muthusamy for potency test. P.W.3 Dr.Khaja Mohideen attached to the Pollachi Government Hospital examined the accused and noted the following.

(i) Secondary Sexual characters well developed.

(ii) No external injuries noted.

(iii) Stamp test (Erection test) positive.

He opined that the individual is potent and general condition is satisfactory and to that effect, he issued Ex.P2 (Potency

Report) certifying the accused is capable of having intercourse.

(m) On 16.06.2006, P.W.12 obtained Ex.P2 (Potency Report) from P.W.3, thereafter, he examined P.W.3 and recorded his statement.

(n) On 02.07.2006 since P.W.12 handed over the case records to (P.W.13) for investigation, P.W.13 (Mr.Kanagasabapathy), the Inspector of Police took over the case for investigation. On 22.07.2006 he examined one Krishnan, Prema and Govindan and recorded their statements. On the same day, P.W.13 completed the investigation of the case and laid a final report against the accused under Sections 376, and 306 of IPC.

4. The learned trial Judge with reference to the incriminating materials adduced by the prosecution, questioned the accused under Section 313 Cr.P.C., for which, he pleaded not guilty, however, he did not choose to examine any witnesses nor he did not mark any documents on his side.

5. After concluding trial, the learned Sessions Judge, Magalir Neethimandram, Coimbatore, came to the conclusion that the appellant found guilty for the offences under Sections 376 (i), 506(ii) and 306 of IPC and convicted him as stated above. Challenging the said conviction and sentence, the appellant is before this Court.

6. Today, when the appeal is taken up for consideration, I have heard the arguments advanced by Mr.C.Venkatesan, learned Counsel appearing for the appellant, Ms.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent and also perused the available records.

7. The first and foremost contention of the learned counsel appearing for the appellant is that, the case was not proved beyond reasonable doubt. No rape has been committed by the appellant/accused. The prosecution has not proved any case. Only based on P.W.1's statement, which was corroborated by P.W.2's evidence, the conviction was ordered and there is no proof on the said statement. P.W.1 is the husband of the deceased and P.W.2 is the relative of the deceased. The statements of the interested witnesses could not be taken into consideration. According to P.W.1, the deceased informed about the occurrence of rape on 06.05.2006 at the place of accused, thereafter, she informed to P.W.2 on 09.05.2006 which is corroborated by P.W.7. In these evidences, since the evidence of P.W.1 is the interested party that corroboration could not be taken into consideration. Apart from that, in the above aspects, the trial Court failed to consider the statements of

other witnesses and given more weightage to the statements of interested witnesses and the evidence of P.W.1, who being the husband of the deceased could not be taken into consideration.

8. Further, the learned counsel appearing for the appellant submitted that for the purpose of removing the bad spiritual effect, the deceased went to the house of the accused which itself would prove that the deceased was not in a sound state of mind. Thereafter, the deceased, who was already in a unsound state of mind deposed about the alleged occurrence to P.W.2, which cannot be taken into consideration in terms of Section 32 of the Indian Evidence Act on the basis of dying declaration. Further, she deposed about the occurrence to her husband/P.W.1 in an unsound mind. Therefore, the entire conviction was recorded based on the statement of the deposition of P.W.1 and P.W.2, which was subsequently corroborated by P.W.7. Therefore, the conviction awarded by the trial Court is totally not sustainable and it is liable to be set aside, whereas, no rape has been occurred instigating the deceased to commit suicide and punishment awarded subsequently on that basis cannot be sustained.

9. Further, he submits that apart from the oral evidence of P.W.1 and P.W.2, no other evidence was produced by the prosecution and there was a delay in filing the First Information Report. The complainant/P.W.1 was aware of the incident on 06.05.2006 that took place at the residence of the accused on 04.05.2006. The complainant has filed the complaint only on 10.05.2006, that too, after the death of the deceased wife, which goes to the root of the prosecution case. P.W.1 has not properly explained the reason for not lodging the complaint immediately even after knowing the occurrence. Further, he pleaded that there was no medical report to substantiate the occurrence of rape on the deceased. In fact, P.W.4 (Dr.Selvaraj) sent the internal parts of the deceased to the Forensic Department and no forensic report was received to substantiate the rape. In these circumstances, based on the consequential evidence, the trial Court concluded that the accused had committed the act of rape. Therefore, the appellant is before this Court praying to set aside the judgment awarded by the trial Court.

10. On the other hand, the learned Government Advocate appearing for the respondent would submit that since the deceased was earlier affected by bad evil spirit cannot be termed as unsound mind. In fact, she was in a sound state of mind only, which enabled her to go to the place of the accused accurately. In fact, this Court in order to find out whether a person, who is said to have affected by some bad spirit would be in a sound state of mind or not, raised a question as regards

the said aspect to the counsel appearing for the appellant, for which, the learned counsel for the appellant is not in a position to answer, neither he has produced any document to establish that a person, when haunted by some evil spirit would be in a unsound mind. Further, the learned Government Advocate submitted that though the deceased was said to have haunted by some evil spirit, the fact that was employed as a part time worker in a Tea Estate, would per se prove that she was in a sound mind and was working there normally as like other workers would normally do.

11. The learned Government Advocate further submitted that the deceased is a victim, the accused committed the rape and the same was informed by the deceased to her husband/P.W.1 and thereafter, there was a quarrel between the husband and the accused and the same was deposed by P.W.1 in his evidence. The said statement was corroborated by P.W.7 and further, before one day prior to her death i.e., on 09.05.2006, she informed about the occurrence to P.W.2 and P.W.2 categorically deposed that she has informed about the alleged occurrence and it is a dying declaration, according to Section 32 of the Indian Evidence Act. Therefore, the learned Government Advocate submits that the punishment awarded by the Trial Court is proper and no interference is required. P.W.4 (Doctor) who conducted autopsy has generally explained the injuries caused in the external body and sent the internal parts to the Forensic Department.

12. Considering the submissions made on either side and on perusal of the records and oral evidence of P.W.1 and P.W.2 and the evidence of P.W.7 and other evidences with regard to the unsound mind of the deceased, the stand taken by the learned counsel for the appellant that the deceased was affected by bad evil, and hence, she was not in sound state of mind cannot be sustained, because deceased was actively working in the Tea estate as a part time worker and a person in an unsound mind, may not be in a position to work as like other workers, and the employer will not provide any work to such person. That apart, deceased herself has informed about the rape to her husband. Further, she also informed the same to P.W.2 one day before committing suicide and because of rape committed by the accused, which instigated the deceased to commit suicide. It is clear that the deceased committed suicide due to the act of rape by the accused.

13. Therefore, the accused is responsible for the death of the deceased and the same amounts to murder, in terms of Section 304 IPC. Accordingly, the Sessions Court rightly convicted the accused and passed sentence against him and the same does not warrant interference in this Criminal Appeal.

14. In the present case, the incident occurred on 04.05.2006 and the same was informed by the deceased to her

husband on 06.05.2006 and immediately, P.W.1, husband of the deceased quarreled with the accused and subsequently, the deceased informed about the occurrence of rape to P.W.2 on 09.05.2006, which is one day prior to the death of the deceased. The declaration made to P.W.2 amounts to dying declaration in term of Section 32 of Indian Evidence Act and the same was well appreciated by the Sessions Judge and treated the statement made by the deceased to P.W.2, as dying declaration. In these circumstances, the contention raised by the learned counsel for the appellant that the complaint was not lodged by P.W.1 immediately after the death of the deceased and the same was lodged with a delay will not vitiate the entire prosecution proceeding. This Court is not in a position to accept the contention of the learned counsel for the appellant.

15. Under these circumstances, the Sessions Court came to the conclusion that the accused has committed rape due to the specific evidences of P.W.1 and P.W.2 and the same was corroborated by the evidence of P.W.7. This Court finds that the learned Sessions Judge has rightly rendered the judgment of conviction and sentence on the accused, and there is no reason to interfere with well considered judgment of conviction passed by the trial Court. Therefore, this Court finds no merits in this appeal. Accordingly, the criminal appeal stands dismissed. The Judgment dated 08.07.2008 made in S.C.No.335 of 2006 on the file of the learned Sessions Judge, Magalir Neethimandram, Coimbatore is hereby confirmed. The learned Sessions Judge is directed to secure the custody of the appellant and make necessary steps to sent him back to prison for serving the remaining period of sentence, if he has already enlarged on bail.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Msv

To

1. The learned Sessions Judge,
Magalir Neethimandram,
Coimbatore
2. The Sub-Inspector of Police,
Valparai Police Station,
Coimbatore District.

3.The Superintendent Central Prison,
Coimbatore.

4.The Judicial Magistrate,
Coimbatore.

5.The Chief Judicial Magistrate,
Coimbatore.

6. The Public Prosecutor,
High Court,Madras.

+1cc to Mr.C.Venkatesan, Advocate, S.R.No. 16844

Criminal Appeal No.576 of 2008

KS (CO)
GN(24/04/2019)