

BAIL SLIP

The Appellant/Accused Nos.1 & 2, viz 1,moorthy, aged 30 years, S/o.Mani and 2, malliga, aged 49 years, W/O.Mani were directed to be released on bail vide order of court dated 02.09.2009 made in MP No.1 of 2009 in CrI.A. No.519 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.519 of 2009

1.Moorthy
S/o.Mani

2.Malliga
W/o.Mani

... Appellants/Accused 1 & 2

Vs.

State represented by
Assistant Commissioner of Police,
Selaiyur Police Station,
Peerankaranai Police Station.
Crime No.268 of 2007

... Respondent/Complainant

Criminal Appeal preferred under Section 374 (2) of Code of Criminal Procedure against the judgment of learned Sessions Judge, Mahila Court, Chengalpattu, passed in S.C.No.280 of 2007 on 21.08.2009.

For Appellants : Mr.R.Vijayakumar

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

J U D G M E N T

This appeal arises against judgment of learned Sessions Judge, Mahila Court, Chengalpattu, passed in S.C.No.280 of 2007 on 21.08.2009.

2. Prosecution case is that accused are husband and mother-in-law of deceased and they demanded dowry from deceased as also treated her cruelly, owing to which the deceased committed suicide by hanging on 16.03.2007. A case was registered in Crime No.268 of 2007 on the file of respondent u/s.174(iii) Cr.P.C.

and later, altered to reflect offence u/s.306 IPC. Upon completion of investigation, a charge sheet was filed informing commission of offences u/s.498-A and 306 IPC before learned Judicial Magistrate, Tambaram and on committal, the case was tried in S.C.No.280 of 2007 on the file of learned Sessions Judge, Mahila Court, Chengalpattu. Before trial Court, prosecution examined 13 witnesses and marked 10 exhibits and marked 1 material object. None were examined for the defence, nor were any exhibits marked.

3.1. PW-1, elder brother of deceased, spoke to being informed by first accused about the death of her sister due to stomach pain at 2.00 p.m. on 16.03.2007, of cordial relationship between accused and deceased and on seeing the body of deceased, questioning the first accused 'why there was an injury in the neck ?' for which there was no proper response and of preference of Ex.P1, complaint. PW-1 also deposed that he did not know why her sister committed suicide and such was his statement during enquiry by Assistant Commissioner of Police.

3.2. PW-2, younger brother of deceased, spoke to he and his mother visiting the deceased three days prior to the occurrence and of their being informed by deceased that the accused were demanding dowry. PW-2 also spoke about the occurrence and preference of complaint by PW-1. PW-5, mother of deceased, has also spoken on the same lines.

3.3. PW-3, neighbour of accused, deposed that on hearing a noise, she and another went to the house of accused, saw the deceased hanging from a ceiling fan and she did not know why the deceased committed suicide. PW-3 also spoke to a congenial relationship between first accused and deceased.

3.4. PW-4, a resident at Aagatheeswarar Koil Street, Perungalathur, deposed that while on his way home, police intercepted him and obtained his signature and he did not why they did so.

3.5. PW-6, uncle of deceased, spoke to a congenial relationship between first accused and deceased over a period of 6 months of the date of marriage and after the death of father of first accused, both accused tortured the deceased towards obtaining money gifted to her by her father-in-law. PW-6 also spoke to his being informed by the deceased over phone that the accused subjected her to physical and mental cruelty.

3.6. PW-7, a resident at Perungalathur, spoke to police personnel obtaining his signature in Ex.P7, seizure mahazar.

3.7. PW-8, Doctor, who conducted post-mortem on the body of the deceased, has opined that the deceased would appear to have died due to asphyxia/shock.

3.8. PW-9, Assistant Director of Forensic Science Department, Chennai, spoke about examination of viscera and submission of Ex.P2, Forensic Science Report.

3.9. PW-10, Head Constable of Selaiyur Police Station, spoke to inquest conducted by Revenue Divisional Officer, handing over the body of deceased for post-mortem and on completion thereof, handing over the same to PW-1. PW-10 also spoke to handing over the viscera for forensic examination.

3.10. PW-11, Sub-Inspector of Police, Selaiyur Police Station, spoke to registration of case in Crime No.268 of 2007 on the file of respondent u/s.174 Cr.P.C. and of forwarding Ex.P4, First Information Report, to Court and higher officials.

3.11. PW-12, Assistant Commissioner of Police, who conducted investigation in the case, spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses, alteration of First Information Report to reflect offence u/s.306 IPC and of obtaining various reports. PW-12 also deposed that on completion of investigation, he filed a charge sheet informing commission of offences u/s.498-A and 306 IPC before learned Judicial Magistrate, Tambaram.

3.12. PW-13, Revenue Divisional Officer, spoke to conduct of inquest, examination of witnesses and of submitting Ex.P10, report, informing that the deceased has committed suicide not because of dowry demand but due to quarrel between first accused and deceased.

4. On appreciation of materials before it, trial Court, under judgement dated 21.08.2009, while acquitting appellants/accused of offence u/s.306 IPC convicted them for offence u/s.498-A IPC and sentenced first accused to 2 years R.I. and fine of Rs.500/- i/d 3 months S.I. and second accused to 1 year R.I. and fine of Rs.500/- i/d 3 months S.I. Against such finding, the present appeal has been filed.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor.

6. PW-5 is the mother of deceased. She has, in chief, deposed to her daughter, the deceased, having informed her both in person as also over telephone that the accused complained of her not having been provided sufficient jewellery and other 'seervarisai'. PW-2, younger brother of deceased, has stated of being informed by her of first accused/appellant being suspicious of her conduct and of demands of the accused over phone. PW-6, paternal uncle of deceased, has spoken to disputes

arising between deceased and accused owing to demands made by accused for monies gifted by his brother/father-in-law of deceased, to her, a story which is not the prosecution case. PW-12, investigation officer has, in cross, admitted that the alleged wrongful conduct attributed to accused by PWs.2, 5 and 6 in their chief-examination had not been informed by them to him in the course of his investigation and that the same did not find place in their Section 161 (3) Cr.P.C. statements. PW-1, the elder brother of deceased, is the de facto complainant. He has been treated hostile since he deposed to accused having treated deceased well and that he did not know the cause of her death. PW-13, Revenue Divisional Officer, in his report - Ex.P10, has informed that his enquiry revealed of first appellant/accused and his wife, the deceased, having led a congenial matrimonial life and that the reason for deceased resorting to suicide was unknown but the same was not dowry related. He had informed that owing to dispute between husband and wife over first appellant/accused not sending her to the parental home, she could have resorted to suicide. The finding of Revenue Divisional Officer on what probably led to the suicide finds support in the evidence of PW-5, mother of deceased. PW-5, in chief, has spoken to deceased, who earlier had suffered an abortion, having conceived again and of her having gone over to see the deceased three days prior to her death. In cross, she has affirmed such position and that the deceased then two months pregnant, was suffering morning sickness. Importantly, she has spoken to deceased insisting on her being sent to her parental home. Although she has denied the defence suggestion of accused refusing to do so since deceased weighed only 31 kilos and of accused requiring her to act in keeping with medical advice and not to travel for a period of four months till the pregnancy is firmly established, the defence suggestion is quite in keeping with PW-13, Revenue Divisional Officer's finding. On proper appreciation, trial Court ought to have rendered a finding of acquittal.

The Criminal Appeal shall stand allowed. The judgment of learned Sessions Judge, Mahila Court, Chengalpattu, passed in S.C.No.280 of 2007 on 21.08.2009, shall stand set aside. Appellants/accused are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahila Court,
Chengalpattu.

2.The Assistant Commissioner of Police,
Selaiyur Police Station,
Peerankaranai Police Station.

3. The Judicial Magistrate,
Tambaram.

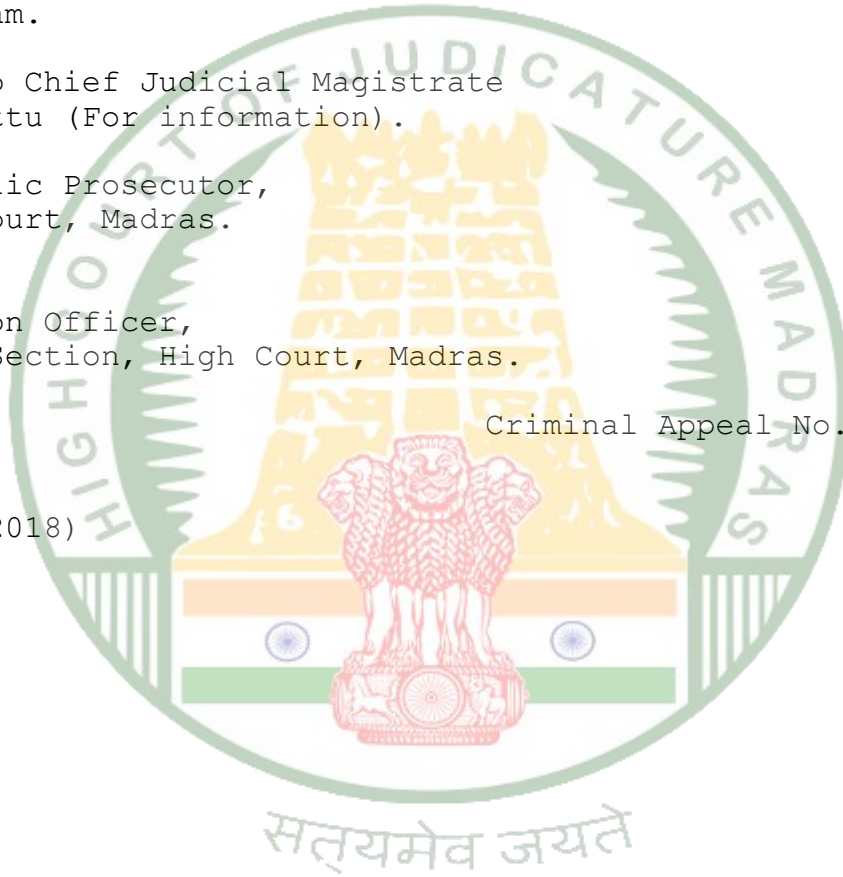
4. do thro Chief Judicial Magistrate
chengalpattu (For information).

5.The Public Prosecutor,
High Court, Madras.

Copy to.
The Section Officer,
Criminal Section, High Court, Madras.

Criminal Appeal No.519 of 2009

GJ II(CO)
TR(16/03/2018)



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