

Bail Slip

The Accused namely Viz., Balaji, S/o. Madhanagopal, 2. Madhanagopal, S/o. Padmanabha Naidu, and 3. Kousalya, W/o. Madhanagopal were released on bail made in MP.No.1/2009 in CrI.A.No.623/09 of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

CrI.A.No.623 of 2009

1.Balaji
S/o.Madhanagopal

2.Madhanagopal
S/o.Padmanabha Naidu

3.Kousalya
W/o.Madhanagopal ... Appellants/Accused

vs.

State by
The Assistant Commissioner of Police,
Villivakkam Range,
Chennai.

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment of learned Judge, Magalir Needhimandram, Chennai, passed in S.C.No.83 of 2007 on 05.10.2009.

For Appellants : Mr.N.R.Elango, senior counsel
for Mr.A.S.Balajee

For Respondent : Mr.V.Arul
Additional Public Prosecutor

JUDGMENT

This appeal arises against judgment of learned Judge, Magalir Needhimandram, Chennai, passed in S.C.No.83 of 2007 on 05.10.2009.

2. Appellants/accused 1 to 3 along with another faced trial in S.C.No.83 of 2007 on the file of learned Judge, Magalir Needhimandram, Chennai. Appellants were husband, father-in-law and mother-in-law of deceased. Fourth accused was brother-in-law of deceased. Prosecution case is that since the date of marriage, accused demanded dowry from deceased as also cruelly treated her. On 03.12.2004, owing to mental and physical agony caused by accused, deceased committed suicide by hanging. On 03.12.2004 at about 12.30 p.m., third accused preferred Ex.P8 - complaint to PW-9, Sub-Inspector of Police, V4, Rajamangalam Police Station. PW-9 registered a case in Crime No.1900 of 2004 on the file of respondent u/s.174 Cr.P.C. Ex.P9 is the Printed First Information Report. PW-9 submitted the complaint to PW-10, Assistant Commissioner of Police. On 03.12.2004, at 01.00 p.m., PW-10 visited the scene of occurrence, prepared Ex.P10 - observation mahazar and Ex.P11 - rough sketch. PW-10 caused photographs to be taken and seized MO-1, a white colour dupatta, used by the deceased under Form-95. Since the deceased died within two years of marriage, PW-10 sent a requisition to PW-8, Personal Assistant of District Collector, towards conduct of inquest. PW-6, Tahsildhar, conducted inquest. The inquest report is Ex.P3. Thereafter, PW-10 forwarded the body of the deceased for postmortem. Ex.P5 - postmortem report reads as follows:

"POST-MORTEM CERTIFICATE

Regarding the body of female aged about 22 years, named Anitha. Requisition received at 03.00 p.m. on 4.12.04 from the Thasildar, Purasawakkam of Perambur with his letter No.1900/04 dated 4.12.2004. Body in charge of Police Constable No.17905 PC V4 Rajamangalam Police Station named N.Balaji

Identification and caste marks -

(1)A black mole below right eye

(2)A black mole over left forearm

The body was first seen by the undersigned at 3.15 p.m. on 4.12.2004. Its condition then was Rigor Mortis present in all the limbs. Post-mortem commenced at 3.15 p.m. on 4.12.2004. Appearances found at the post-mortem - Moderately nourished female body.

Injuries. - An incomplete brown colour ligature abrasion 19 cm x 2 cm seen over the front and sides of the neck on the front the ligature abrasion is above the thyroid cartilage on right side 8 cm below the

mastroid process and 5 cms below the left mastroid process 4 cms below the chin O/D the area underneath the ligature abrasion is pale and parchment. No evidence of hemorrhage in the soft tissue of the neck. Thyroid cartilage and Hyoid bone are intact. No other injury made out.

Hear : Normal in size C/s. All chambers contain fluid blood.

Coroney :Patent. Hyoid bone : Intact. Stomach : Empty. Lungs, liver, spleen, kidneys normal c/s congested. Intestines : Distended with gas. Uterus : Empty. Pelvis : Intact. Scalp bones Membranes : Intact. Brain : Surface vessels are premium. Spinal column : Intact.

Opinion: The deceased would appear to have died of Asphyxia due to hanging."

PW-10 examined PWs.1, 2, 4, 5 and others and recorded their statements. In the course of enquiry, PW-10 found that there was dowry demand. PW-10 altered the F.I.R to one u/s.498-A and 304-B IPC. The alteration report is Ex.P12. On 04.12.2004 at about 08.00 p.m., PW-10 arrested the accused. On 05.12.2004, PW-10 produced the accused before Judicial Magistrate. PW-10 examined PW-7, Doctor, who conducted postmortem and recorded his statement. PW-10 examined PW-8 and recorded his statement. On completion of investigation, PW-10 filed charge sheet informing commission of offences u/s.498-A and 304-B IPC.

3. Before trial Court, prosecution examined PWs.1 to 10 and marked 12 exhibits and one material object. 2 witnesses were examined on the side of defence and 2 exhibits were marked. On questioning u/s.313 Cr.P.C., accused denied charges.

4. On appreciation of materials before it, trial Court, under judgment dated 05.10.2009, while acquitting fourth accused, convicted appellants/ accused 1 to 3 for offences u/s.498-A and 304-B IPC and sentenced each of them to 3 years R.I. and fine of Rs.5,000/- i/d 1 year S.I. for offence u/s.498-A IPC and 7 years R.I. for offence u/s.304-B IPC. Trial Court directed that sentences run concurrently. There against, the present appeal has been filed.

5. Heard learned senior counsel for appellants and learned Additional Public Prosecutor for State. Perused the materials on record.

6. Learned senior counsel for appellants submitted that Ex.P3 - inquest report marked through PW-6, Tahsildhar, informed alternate causes of death in that while three of the panchyatdhars expressed the view that it was owing to the cruelty meted out by accused that deceased resorted to suicide, two of the panchyatdhars informed that deceased had told first

appellant/husband that she wished to go over to her mother's house but he had stated that since it was Friday they could go on Saturday and then he had gone off to work. They were of the view that she could have resorted to suicide distressed by his response. PWs.1, 2 and 3, mother, father and uncle of deceased had deposed to having been informed by deceased of cruelty meted out to her. Third accused is the sister of PW-2. Prosecution party and accused were immediate relatives and there admittedly was a property dispute between them as spoken to by PWs.1 to 3.

7. Heard learned Additional Public Prosecutor on the above submissions.

8. There absolutely is no material to indicate that deceased/wife of first accused was subjected to cruelty soon before death and in the absence thereof, no conviction for offence u/s.304-B IPC can be sustained. The very inquest report [Ex.P3] marked through PW-6, Tahsildhar, indicates the alternate possibility of deceased having resorted to suicide as an angry response to first appellant/first accused/husband informing that her parental home could be visited the next day. In such circumstances, conviction u/s.304-B IPC becomes totally unacceptable. A perusal of evidence of PWs.1, 2 and 3, mother, father and uncle of deceased does not inform of any particular acts of cruelty and is merely to the effect that deceased had told them of being ill-treated. PWs.1 to 3 have admitted to there being a property dispute with the accused party. Therefore, the possibility of allegations of cruelty, vague as they are, being motivated cannot be ruled out.

The Criminal Appeal shall stand allowed. The judgment of learned Judge, Magalir Needhimandram, Chennai, passed in S.C.No.83 of 2007 on 05.10.2009, shall stand set aside. Appellants are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gm

To

1.The Judge,
Magalir Needhimandram,
Chennai.

2.The Assistant Commissioner of Police,
Villivakkam Range,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

4. The X Metropolitan Magistrate, Chennai.

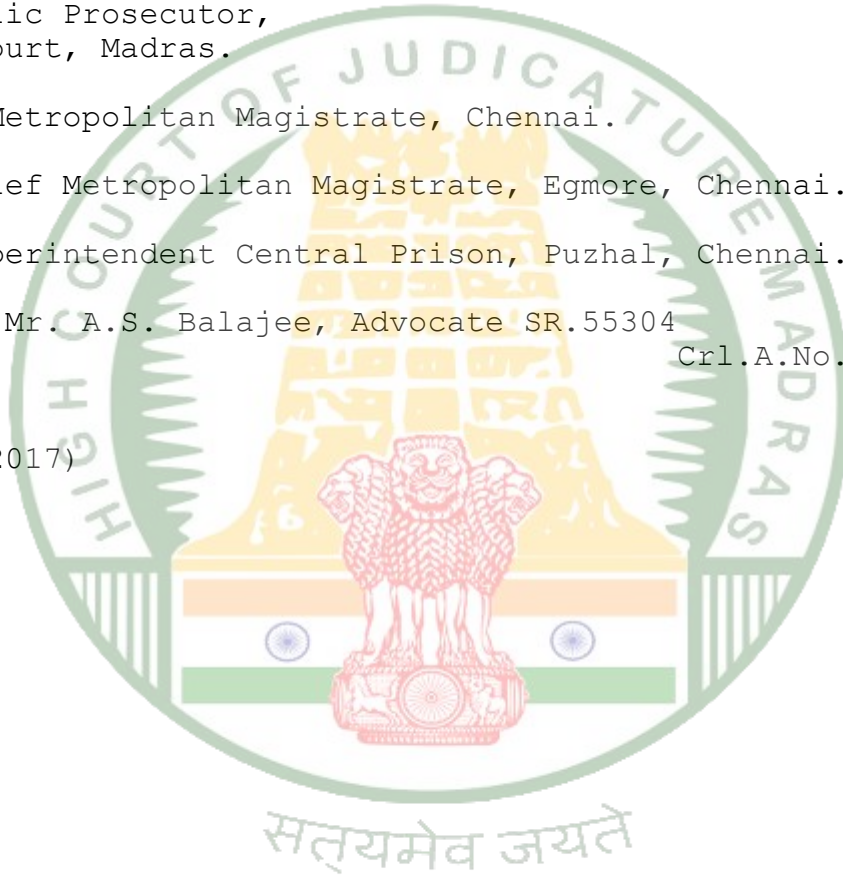
5. The Chief Metropolitan Magistrate, Egmore, Chennai.

6. The Superintendent Central Prison, Puzhal, Chennai.

+ 1 cc to Mr. A.S. Balajee, Advocate SR.55304

Crl.A.No.623 of 2009

NRJK(CO)
EU(24/11/2017)



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