

BAIL SLIP

The Appellants/Accused 1 to 3 namely 1.Pannerselvam S/o.Subramani, 2.Subramani S/o.Marimuthu and 3.Amirthavalli W/o.Subramani was ordered to be released on bail by order of this Court, dated 17.04.2007 and made in M.P.No.1 of 2007 in CRL.A.No.378 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.378 of 2007

1. Pannerselvam
2. Subramani
3. Amirthavalli

... Appellants/Accused 1 to 3

-Vs-

The State represented by
The Inspector of Police,
Annathanampatti Police Station,
Salem.

(Crime No.1524 of 1998)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgement dated 22.03.2007 made in S.C.No.231 of 2005 on the file of learned Sessions Court (FTC-2), Mahila Court, Salem.

For Appellants : Mr.R.Sankarasubbu

For Respondent : Mr.V.Arul

Additional Public Prosecutor

J U D G M E N T

This appeal arises against judgment dated 22.03.2007 made in S.C.No.231 of 2005 on the file of the Sessions Court (FTC-2), Mahila Court, Salem, convicting appellants/accused 1 to 3 for offences u/s.498-A, 306 and 304(B) IPC and Section 6(2) of Dowry Prohibition Act sentencing each of them to 1 year R.I. and fine of Rs.500/- i/d 1 month S.I. for offence u/s.498-A IPC, two years R.I. and fine of Rs.1,000/- i/d three months S.I. for offence u/s.306 IPC and 3 years R.I. and fine of Rs.1,000/- i/d

3 months S.I. for offence u/s.304(B) IPC. Trial Court directed the sentences imposed on the accused to run concurrently.

2. The case of the prosecution is that the first appellant and the deceased were married on 22.05.1998. The first appellant/husband and the second and third appellants/father and mother of the first appellant/in-laws of the deceased, treated the deceased cruelly and made demands for dowry. Unable to bear the harassment meted out to her, the deceased consumed a poisonous substance at 11.00.a.m. on 12.10.1998 and as a result, died on the same day at 10.30.p.m.

3. Father of the deceased preferred Ex.P8, complaint, on 13.10.1998 at 3.30.a.m. PW-15 Sub Inspector of Police, Annathanapatti Police Station, registered a case in Crime No.1524 of 1998 on the file of respondent u/s.174 Cr.P.C. and 306 and 498A IPC. First Information Report is Ex.P8 which was forwarded to RDO. PW-14 Assistant Commissioner of Police, took up investigation on 13.10.1998 at about 4.00.p.m., visited the place of occurrence, prepared Exs.P6 and P9 - Observation Mahazar and Ex.P10 - Rough Sketch. He examined Pws.1, 2, 3 and others and recorded their statements. Based on his enquiry, PW-14 came to the conclusion that the death has occurred owing to dowry demand. On 13.10.1998, he arrested the accused in front of the brother's house of second accused at Moonagaradu. Upon receipt of FIR, PW-10 RDO went to the place of occurrence and conducted inquest in the presence of Panchayathars. He examined Pws-1 to 3 and recorded their statements. Upon completion of inquest he forwarded the report to Assistant Commissioner of Police, South Zone. The body was sent to the Government Hospital, Salem for post-mortem. The post-mortem report is Ex.P4. Upon transfer of PW-14, PW-12 Assistant Commissioner of Police took up further investigation in the case. He examined Pws.1, 3 and others and recorded their statements. Upon completion of investigation on 30.03.1999, he filed a charge sheet informing commission of offences u/s.498A, 306 and 304B IPC. The case was tried in S.C.No.231 of 2005 on the file of learned Sessions Judge, Mahila Court, Salem.

4. Before the trial Court, prosecution examined PWs.1 to 15 and marked Exs.P1 to P12. None were examined on behalf of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied charges. Learned trial Judge, on appreciation of the evidence, under judgement dated 22.03.2007, while convicting appellants/accused 1 to 3 for the aforesated offences, sentenced each of them as stated above. Trial Court directed the sentences to run concurrently. There against, the present appeal.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor. Perused the records.

6. Learned counsel for appellants submitted that a complaint was preferred by the father of deceased, who died in the year 2002. PWs-1 and 2 are the wives of paternal uncles of the deceased and they have heard about the wrong doing to the deceased from the father of the deceased/de-facto complainant. PW-3-sister of the deceased had deposed that the deceased informed her of the mother-in-law/A3 scolding her and demanding jewellery. PW-4, the other sister of the deceased, had deposed that the deceased told her father/de-facto complainant about A3's demand for necklace. PW-5, who had accompanied the de-facto complainant towards preferring the complaint of the case, had stated that the deceased has not said anything to him. PWs-6 and 9, witnesses to Exs.P9 and P6, Observation Mahazar have admitted to not knowing its contents. PW-7, Doctor, a private practitioner has spoken to the deceased having been brought to him by A1, of his providing first aid and that the deceased, then conscious, had not informed of any wrong doing of the appellants. PW-8, Doctor had spoken to the fact that it was the first appellant/A1 who had brought the deceased to hospital. He has spoken to subsequent death of the deceased. The RDO has been examined as PW-10. A perusal of the report-Ex.P3 shows that it is inconclusive, inasmuch as while on the one hand, the parents of the deceased informed the possibility of the deceased having consumed poison, owing to ill treatment meted out to her, they have also informed the possibility of her having done so, owing to the appellants refusing to afford her a separate residence.

7. Learned counsel for the appellants also pointed out that Ex.P8 printed F.I.R revealed a delay of 16½ hours in registration of the case. It is the prosecution case that the deceased consumed poison before 11.00.a.m on 12.10.1998 but the FIR has been registered only at 3.30 hours on 13.10.1998, though the police station was a mere 3½ kilometers from the place of occurrence. Learned counsel for the appellants submits that the possibility of the complaint being false cannot be ruled out.

8. Learned counsel submits that for proving offence under section 304(B) IPC, there should be evidence that the deceased has been subjected to wrong doing soon before her death and evidence of such nature totally was lacking. RDO, PW-10 had also admitted that PW-3-sister of the deceased had informed that there was no dispute over dowry harassment in the family of the deceased.

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

10. The present is a case where there absolutely is no direct evidence of wrong doing by the accused. The inconclusive nature of PW-10, RDO's report places the cause of death in the realm of speculation. No finding of conviction can be rendered on speculation.

11. The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Sessions Judge, Mahila Court, Salem, in S.C.No.231 of 2005 on 22.03.2007, are set aside and appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded Bail bond(s), if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court, FTC-2,
Salem.
2. The Judicial Magistrate 4,
Salem.
3. The Chief Judicial Magistrate,
Salem.
4. The Superintendent,
Central prison, Salem.
5. The Inspector of Police,
Annathanampatti Police Station,
Salem.
6. The Public Prosecutor,
High Court, Chennai.

Copy To
The Section Officer, VR Section,
High Court, Madras-104.

Criminal Appeal No.378 of 2007

SV(CO)
CS/14/12/17