

Bail Slip

The Appellant/Accused viz 1. K. Jayamurugan 2. G. Suresh are directed to be released on bail as per order dated 06.03.2013 in M.P. No 1 of 2013 in CrI.A.No.161 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.161 of 2013

1.K.Jayamurugan

2.G.Suresh

... Appellant/Accused

-vs-

The State represented by
The Inspector of Police
Vellore Taluk Police Station
Vellore
Crime No.67/2011

... Respondent/Complainant

Criminal Appeal filed under Section 374 r/w 382 of the Code of Criminal Procedure against the judgment of learned I Additional District and Sessions Judge, Vellore , passed in S.C.No.128 of 2011 on 13.02.2013.

For Appellants : Mr.V.Krishnamoorthy

For Respondent : Mr.M.Mohammed Riyaz
Government Advocate [CrI.side]

J U D G M E N T

This appeal arises against the judgment of learned I Additional District and Sessions Judge, Vellore, passed in S.C.No.128 of 2011 on 13.02.2013, convicting appellants/accused for offence u/s.355 and 306 of IPC and sentencing them to undergo 30 months R.I and fine of Rs.8000/- i/d 1 year R.I for offence u/s. 306 IPC and fine of Rs.2000/- each - i/d 6 months R.I for offence u/s. 355 IPC.

2. The case of the prosecution is that the deceased Thamba @ Jagankumar and the accused A1 and A2 were residents of Kattupadi

Village. There were frequent arguments and enmity between them. On 23.02.2011 at about 6.30 p.m A1 and A2 had an argument with the deceased which led to A1 and A2 beating the deceased. Due thereto the deceased committed suicide by hanging on the same day at 6.45 p.m rendering A1 and A2 liable for offences punishable u/s. 355 and 306 IPC. P.W.1 father of the deceased went to the Police station on 24.02.2011 at 08.30 a.m and preferred complaint-Ex.P.1. P.W-6, Sub Inspector of Police received the complaint and registered a case in Crime No.67 of 2011 on the file of respondent u/s. 174 Cr.P.C. Printed FIR is Ex.P.6 P.W.7- Inspector of Police took up investigation, proceeded to the place of occurrence and prepared Ex.P.2- Observation Mahazar and Ex.P.7- Rough Sketch in the presence of P.W.4- Raja. P.W.7 examined witnesses and recorded their statements. Based thereon, he altered the FIR to one u/s. 306 IPC. Ex.P.8 is the Alteration Report. Inquest report is Ex.P.9. Ex.P.3 is the requisition letter for conducting Post Mortem. P.W.5 is the Doctor who conducted the Post mortem. Ex.P.5 is the Post Mortem Certificate. Ex.P.4 is the Toxicology Report. On completion of investigation P.W.7 filed final report against the appellants/accused for offences punishable u/s. 355 and 306 IPC. The case, upon committal, was tried in S.C.No.128 of 2011 on the file of learned I Additional District and Sessions Judge, Vellore.

3. Before trial Court, prosecution examined 7 witnesses and marked 9 exhibits. 2 witnesses were examined on behalf of defence and no exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 13.02.2013, rendered a finding of conviction and sentenced both accused to undergo 30 months R.I and fine of Rs.8000/- i/d 1 year R.I for offence u/s. 306 IPC and fine of Rs.2000/- each - i/d 6 months R.I for offence u/s. 355 IPC. There against, the present appeal.

4. Heard learned counsel for appellants and learned Government Advocate [Crl.side] as also perused the records.

5. A1 and one another have been examined as D.W.1 and 2. It is the defence case that the deceased troubled the accused making sexual overtures over cellphone. On 22.02.2011, A1 and his brother-in-law raised the issue with P.W.2, brother of the deceased. P.W.2 beat him and pushed the deceased down. Thereafter, the deceased left for Chennai on 22.02.2011 and returned on 23.02.2011. At 8.30 a.m, he called A1 over cell phone and said words to the effect that ' I will not leave you' and 'see what I will do'. A1 immediately preferred a complaint with the local police station and a constable was sent with him. Seeing P.W.1 and 2 on the way, such constable required them to send the deceased to the Police Station. According to the prosecution it is the act of the accused A1 and 2 abusing and

slipper the deceased and telling him that it was better he died rather than being stuck to his cell phone that had led to the act of suicide. Though P.W.1 and 2 uniformly depose to having witnessed A1 & 2 beating the deceased, it is the admission of P.W.2 in cross that he had come to the scene only after the occurrence. He has also deposed to not being sure whether he or his father P.W.1, first were at the scene. While P.W.2 would vouch for the manliness of the deceased P.W.1 his father would inform otherwise. The evidence of P.W.1 is also to the effect that when he went to the scene of occurrence, the accused had run away. It is the admission of P.W.2 that since his family did not enjoy a good relationship with any of the neighbours, none of them came to the scene. We find the evidence of P.W.1 and 2 prevaricative. The defence that the deceased resorted to suicide on having been beat by his brother P.W.2 and owing to fear on having been required to attend the Police Station owing to fear on having been required to attend the Police station owing to wrongs committed by him cannot easily be brushed aside. The occurrence of the deceased's suicide took place on 23.02.2011 at 6.30 p.m and the FIR in the case has been registered only on 24.02.2011 at 8.30. a.m. There is every possibility of the same being the product of deliberation.

For the aforesaid reasons, this Criminal Appeal shall stand allowed. The conviction and sentence passed by learned I Additional District and Sessions Judge, Vellore, passed in S.C.No.128 of 2011 on 13.02.2013 are set aside and appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded to them. Bail bond(s), if any, executed by them shall stand cancelled. Connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The I Additional District and
Sessions Judge, Vellore

2.The The Inspector of Police
Vellore Taluk Police Station
Vellore.

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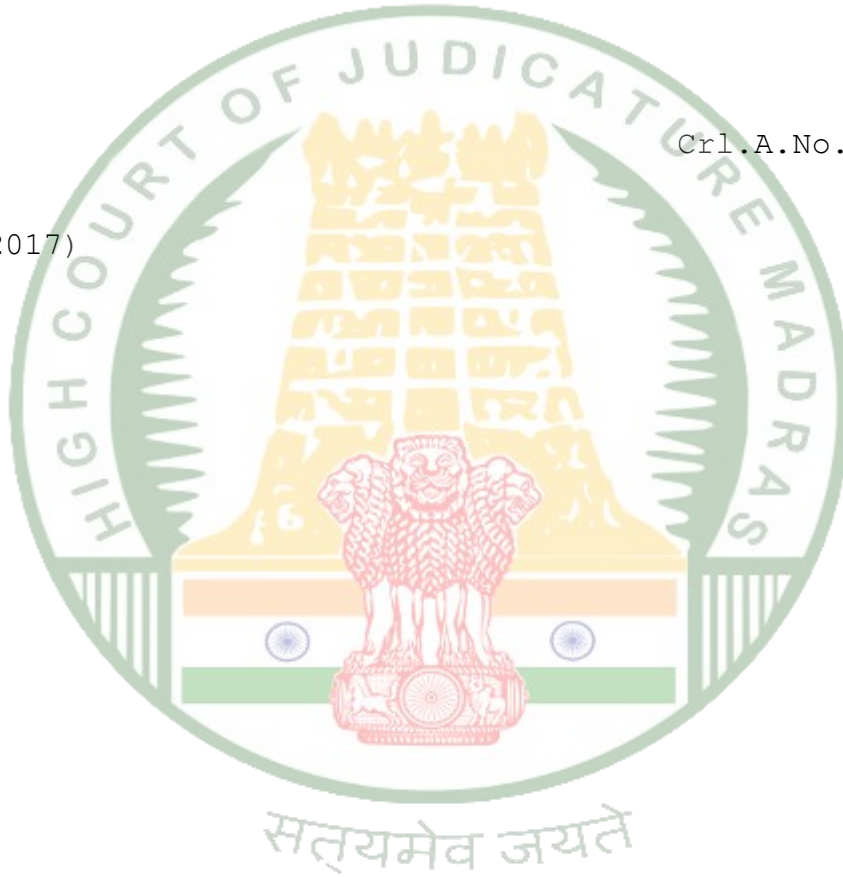
3.The Public Prosecutor,
High Court, Madras.

4. The Judicial Magistrate No I
Vellore.

5. The Chief Judicial Magistrate
Vellore.

Cr1.A.No.161 of 2013

SP(26/12/2017)



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