

BAIL SLIP

- 1.Ammasi
- 2.Indrani

The above mentioned petitioner/Appellants are directed to be released on bail as per order of this court dated 10.03.2014 made in MP.No.1/13 in Crl.A.No.651/13 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.651 of 2013

- 1.Ammasi

S/o.Marimuthu

- 2.Indrani

W/o.Govindaraj

.... Appellants/Accused 1 and 2

-vs-

The State represented by
The Inspector of Police,
Jalakandapuram Police Station,
Salem District.

Crime No.348 of 2009

.... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of learned Sessions Judge, Mahila Court, Salem, passed in S.C.No.229 of 2012 on 17.09.2013.

For Appellants : Mr.D.Shivakumaran

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

J U D G M E N T

This appeal arises against judgment of learned Sessions Judge, Mahila Court, Salem, passed in S.C.No.229 of 2012 on 17.09.2013, convicting appellants/accused 1 and 2 for offences u/s.498-A, 306 and 201 IPC and sentencing each of them to 3 years R.I. and fine of Rs.1,000/- i/d 1 month S.I. for offence u/s.498-A IPC, 10 years R.I. and fine of Rs.5,000/- i/d 3 months S.I. for offence u/s.306 IPC and 3 years R.I. and fine of

Rs.1,000/- i/d 1 month S.I. for offence u/s.201 IPC. Trial Court directed sentences to run concurrently.

2. The case of the prosecution is that first accused and deceased fell in love and entered upon marriage one month before the occurrence. A2 is the wife of A3, brother of A1. All of them lived jointly. The deceased came to know of the illicit relationship between A1 and A2. When the same was questioned by the deceased, all the accused harassed her and cast aspersions on her chastity, owing to which the deceased consumed poison on 30.12.2009 and died inside the matrimonial home. Accused concealed the body of the deceased using coconut thatch and informed co-villagers that the deceased, who went to fetch water on 30.12.2009 at 05.30 a.m, did not return home. The same day at about 10.00 p.m the accused lowered the body of the deceased into the well belonging to one Marriappan. On 31.12.2009 at about 07.45 a.m., the accused informed co-villagers that the deceased committed suicide.

3. PW-1, father of the deceased, preferred Ex.P1, complaint, on 31.12.2009 at 10.00 a.m. PW-9, Sub Inspector of Police, registered a case in Crime No.348 of 2009 on the file of respondent u/s.174 Cr.P.C. Printed First Information Report is Ex.P5. PW-12, Deputy Superintendent of Police, took up investigation on 31.12.2009, visited the place of occurrence, prepared Ex.P2 - Observation Mahazar and Ex.P11 - Rough Sketch. He examined PWs.1, 2, 5, 6, 7 and others and recorded their statements. Upon receipt of inquest report of RDO, PW-12, concluded that the death had not been occasioned owing to dowry demand. He altered the FIR to one u/s.306 and 201 IPC and filed Alteration Report in Ex.P12. P.W.12 forwarded the body of the deceased for postmortem. Ex.P.6 is the postmortem report. PW-13, Assistant Commissioner of Police, took up further investigation in the case. On 08.01.2010, at about 09.00 a.m., he visited the place of occurrence, prepared Observation Mahazar and Ex.P13 - Rough Sketch in the presence of PWs.3 and 4. He examined PWs.1 to 4 and recorded their statements. On 14.06.2010 at about 06.30 a.m., upon identification by witnesses, he arrested accused 1 and 2 at their house. He recorded the voluntary confession of A1 in the presence of PW-8, Village Administrative Officer and another and obtained the signature of accused and witnesses. He examined PW-8, Village Administrative Officer and another and recorded their statements. He took the accused 1 and 2 to police station, and sent them to judicial custody. On 28.06.2010, he examined Head Constable and PW-9, Sub-Inspector of Police and recorded their statements. The absconding accused A3 had surrendered before Judicial Magistrate, Mettur and obtained bail. Upon obtaining Ex.P7, Chemical Analysis Report, on 25.07.2010, he examined PW-10, Doctor, who conducted postmortem and recorded his statement. Upon completion of investigation he filed a charge sheet informing commission of offences u/s.306 and 201 IPC, on

03.12.2010. Upon committal, the case was tried in S.C.No.229 of 2012 on the file of learned Sessions Judge, Mahila Court, Salem.

4. Before the trial Court, prosecution examined PWs.1 to 13 and marked Exs.P1 to P13. 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 judgment dated 17.09.2013, while acquitting A3, convicted appellants/accused 1 and 2 for offences u/s.498-A, 306 and 201 IPC and sentenced them as afore stated. There against, the present appeal.

5. Heard learned counsel for appellant and learned Government Advocate [Crl.side]. Perused the records.

6. Learned counsel for appellants submitted that the prosecution case was totally false and contended that while it was the prosecution case that the deceased had resorted to suicide owing to the continued illicit intimacy between A1 and A2 and the accused required her to do household work as also farm work or otherwise 'run away and die', P.W.1 father of the deceased has not spoken to any of the allegations levelled in the charges. He has simply spoken to P.W.3 informing him that the deceased was missing. The evidence of P.W.1 also indicates a suicidal tendency in the family of the deceased. Though the Court prepared typed set reflects the position that P.W.1 had denied the suggestion that it was the conduct of the prosecution party which had resulted in the suicide of his daughter, the certified copy of P.W.1's evidence obtained by the accused informs otherwise. The correction by pen of an admission, to one of denial, was apparent in the Court typed set.

7. Learned counsel for appellants submitted that P.W.2-mother of the deceased clearly admitted that after deceased's elopement with A1, she, for the first time, saw her dead in the well. P.W.2 thereafter exaggerated on the allegations in the charges and stated that she came to know of the cruelty meted out to the deceased and the concealment of the body only through her first son-in-law - P.W.6. P.W.6 has turned hostile. In any event, admittedly P.W.2 is a hearsay witness. There absolutely is no evidence in support of the charge of cruelty, abetment of suicide and screening of evidence. The evidence of PWs.1, 2 and 5 viz., father, mother and brother of the deceased clearly establish the following facts:

A1 and the deceased were in love. A2 and A3 viz., sister-in-law and brother of A1, who were like parents to A1 approached PWs.1 and 2 requesting them to give their daughter, the deceased, in marriage to A1. P.Ws.1 and 2 did not agree stating that the horoscopes did not match and started looking for an alliance for their daughter, the deceased. This led to A1 and

the deceased getting married on their own accord. Thereafter, admittedly P.Ws.1, 2 and 5 did not even see the deceased even though all of them lived in the same vicinity. This indicates that P.Ws.1, 2 and 5 were not even on talking terms with the deceased and A1. There was absolutely no opportunity for them to know directly whether the deceased was harassed or treated cruelly. They had reason to implicate the accused by making false allegations. He further submitted that the RDO examined witnesses on the same day and P.W.1 deposed that the statements given to RDO are true but none of the allegations leading to the charges were spoken to by any of the witnesses before the RDO. The evidence of P.Ws.3 and 4 do not advance the case of the prosecution. P.W.3's deposition is that Police did not enquire him and he signed on white paper and that he did not know the contents of Ex.P2, observation mahazar. P.W.6, the first son-in-law of P.Ws.1 and 2, who allegedly narrated the cruelties meted out to the deceased and the concealment of the dead body had turned hostile. Evidence of P.W.7, alleged attestor to the Observation Mahazar, does not advance the case of the prosecution. The evidence of P.W.8 - VAO reveals that on 14.06.2010 he was summoned by the respondent Police whom he accompanied to the house of A1 and A2 who were arrested, whereafter, A1 voluntarily gave a confession. The confession did not lead to any recovery. No portion of the confession was marked as an Exhibit, but the Trial Court in paragraph 11 of the judgment held that the evidence of P.W.8- VAO made clear that on being summoned by Police, he went along with them to the house of the accused where A1 and A2 were arrested and A1 gave a confession admitting the offence. The said observation wrongly has been relied upon to convict the appellants.

8. Challenging the FIR and questioning the manner in which the complaint came to be registered, learned counsel for appellants submitted that in chief examination, P.W.1 stated that he had given the complaint at the Police station as one of suspicious death whereas in cross P.W.1 deposed that the owner of the well has called the Police station on finding the body of the deceased and thereafter Police reached the spot. P.W.1 also stated that as he was asked to give a complaint at the place of occurrence, he wrote the same and affixed his thumb impression. Learned counsel would further submit that even though FIR allegedly was registered on 31.12.2009 at 10.00 a.m, the same reached Court after a delay of 45 days. The delay is fatal to the case of the prosecution.

9. Learned counsel for appellants contended that arrest of the accused had not been effected in the manner put forth by the prosecution and submitted that P.W.1 deposed in cross examination that the accused were arrested 20 days after the occurrence i.e., 20 days after 30.12.2009, whereas arrest was shown as on 14.06.2010 viz., nearly six months after the alleged

occurrence. Ex.P.10- special report by RDO is of date 21.01.2010. Ex.P.12 F.I.R alteration report is dated 31.12.2009. Alteration of F.I.R from 174 Cr.P.C to 306 and 201 IPC has been done even before receipt of Ex.P.10 without any material to support the same. Ex.P.12 also reached Court only on 19.02.2010. The Trial Court has placed the burden of proof upon the accused and held that the accused have not rebutted the evidence of the prosecution and that A1 has committed acts of cruelty because of the illicit intimacy between him and A2, even though evidence of the prosecution witnesses have been exhibited to be totally unworthy. The Trial court in paragraph 11 of its judgment has held that the evidence of P.W.8 - VAO makes clear that on being summoned by the police, he went along with them to the house of the accused and arrested A1 and A2 and A1 gave a confession admitting to offences committed by him. The same has been relied upon for convicting the accused/appellants. Without considering whether the prosecution has proved its case beyond all reasonable doubt, the Trial court held that the accused have not proved whether there is any enmity between them on one hand and PW-9, PWs.12 and 13 viz., Sub Inspector of Police, D.S.P and Inspector of Police on the other and that there is no necessity for them to file a false case. P.W.1 was examined on 22.07.2013. The certified copy of her deposition was applied for on 23.07.2013, the same was made ready and furnished on 29.07.2013. However, the material alteration seen in the last page of Court record of the evidence of P.W.1, is not present in the certified copy obtained by the accused. Learned counsel submitted that the Trial court has gone to the extent of tampering with the evidence recorded for convicting the appellants/accused. Trial Court ought not to have made much of an erroneous suggestion in cross examination of P.W.2 of illicit intimacy between A1 and A2.

10. It is a rare case that this Court would find itself fully in agreement with the contentions of learned counsel for appellants/accused. This is one such case. The following points arise for consideration:

There is no evidence for any of the ingredients of the charges viz.,

- (i) Illicit intimacy between A1 and A2.
- (ii) Harassment and cruelty by A1 to A3 and that the deceased was scolded by them. Evidence on record indicates that the parents, immediate relatives of deceased and the deceased were estranged.
- (iii) Suspicion about the character of the deceased by A1 to A3 leading to the suicide.
- (iv) Consumption of poison by deceased Suseela @ Chinnamani at the house of the accused and her death in the house of the accused.
- (v) Concealment of the death of suseela @ Chinnamani by A1 to A3 and the utterance of the accused to the villagers that deceased suseela @ Chinnamani had gone to fetch water on

30.12.2009 at 5.30 a.m. and she went to the forest area (Kaattu Pakkam).

(vi) Concealment of the dead body of Suseela @Chinnamani with coconut thatch during the whole day of 30.12.2009 and carrying the body of the deceased on 30.12.2009 at about 10.00 p.m to the nearby well of Mariappan.

(vii) Utterance by the accused 1 to 3 to the villagers at about 7.45 a.m on 31.12.2009 that Suseela @ Chinnamani committed suicide by jumping into the well.

The entire prosecution case stands falsified.

The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Sessions Judge, Mahila Court, Salem, in S.C.No.229 of 2012 on 17.09.2013, 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 IX)

//True Copy//

Sub Assistant Registrar

gm/kpr

To

1.The Sessions Judge,
Mahila Court,
Salem.

2.The Inspector of Police,
Jalakandapuram Police Station,
Salem District.

3.The Judicial magistrate II Mettur

4.The Superintendent Central Prison
Coimbatore

5.The Chief Judicial Magistrate Salem

6.The Superintendent Central Prison Vellore

7.The Public Prosecutor,
High Court, Chennai.

Criminal Appeal No.651 of 2013

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