

Bail Slip

The Appellants/Accused Viz; 1) Seeni @ Srinivasan, aged about 31 years S/o.Mari Chettiyar, No.401, Meenavar Street, Avarankadu Pallipalayam, Namakkal, District, 2) A.K.Shanmugam aged about 28 years S/o.Krishnan, Agni Mariamman Koil Street, Avarankadu, Pallipalayam, were directed to be released on bail as per order dated 29/08/2002 made in CrI.MP.No.8678/2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 18.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.1268 of 2002

1.Seeni @ Srinivasan

2.A.K.Shanmugam

...Appellants/Accused Nos.1 &2

vs.

The State, rep. by
The Inspector of Police,
Pallipalayam Police Station,
Pallipalayam.

(Crime No.1240 of 1996) ...Respondent /Complainant

Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 22.08.2002 passed by the learned Principal Sessions Judge, Namakkal in S.C.No.56 of 2002.

For Appellants : Mr.V.Sairam

For Respondent : Mr.R.Sekar
Government Advocate

JUDGMENT

The accused 1 and 2, in Sessions Case No.56 of 2002, on the file of the learned Principal Sessions Judge, Namakkal, are the appellants herein. Totally, there are three accused in this case. These appellants/Accused stood charged for offence under Sections 376(2)(g) r/w 34(3 counts), 302 r/w 34 and 379 r/w 34 IPC. The trial Court, by judgment dated 22.08.2002, convicted the accused for the offence under Section 411 r/w 34 IPC and sentenced them to undergo rigorous imprisonment for two years and no fine was imposed and acquitted them from other charges

framed against them. Challenging the above said conviction and sentence, the accused are before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

(i) The deceased in this case one Mahalakshmi, who was the wife of P.W.2. The deceased and another accused, namely Shiva, (his case has been spilt up separately), had illicit intimacy. These appellants and the said Shiva are being friends. The said Shiva is used to meet the deceased near Kailankadu. On 30.10.1996, the deceased came to Kailankadu at Karkadu near the field of one Mohan, and the absconding accused Shiva and deceased had sexual intercourse. At that time, both the accused came there from their hide out and wanted to have sexual intercourse with the deceased, but the deceased refused for the same. Then, the absconding accused(Shiva) pressed her throat and catch hold of her, the second accused gagged her mouth and nose with cloth and the third accused committed rape on her, thereafter the second accused also committed rape on her, then A1 to A3 burnt her face, neck, breast, thigh and other places with torch. Thereafter, the deceased died on the spot. Then, all the 3 accused stolen gold Mangalsutra along with two coins, small tubes and ear studs of the deceased and run away from the occurrence place. On 30.10.1996 at about 5.00 p.m., after seeing the body of the deceased, P.W.1 informed P.W.2/the husband of the deceased and then he made a complaint before the Village Administrative Officer P.W.6, in turn he had filed a complaint before the respondent police station.

(ii) P.W.13, the Sub Inspector of Police, working in the respondent police station, received the complainant and registered a case in Crime No.1240 of 1996 for the offence under Section 302 IPC and prepared first information report Ex.P25 and sent the same to the jurisdictional Judicial Magistrate Court and copies of the same to the higher officials.

(iii) P.W.16, the Inspector of Police, working in the respondent police station, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar[Ex.P8], Rough Sketch [Ex.P26] in the presence of witnesses. Then, he conducted inquest over the dead body in the presence of panchayatdars and he prepared inquest report Ex.P27 and sent the dead body for postmortem autopsy along with requisition letter[Ex.P2] to the Government Hospital, Pallipalayam.

(iv) P.W.3, the Doctor, working in the Government Hospital, Pallipalayam conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

- External injuries: (1) Two burns 1/2" x 1/2" above left elbow.
(2) Burning 3% x 3% over front of right

side back at login level with 3cms conic abrasion marks placed one below other on left side neck.

(3) Burns over sternum and right side burnt each 1" x 1".

(4) Burns 2" x 2" below right ear.

(5) Burns 5" x 2" over radial border of right forearm.

(6) Burns over left forearm 1 x 2" and another over the left elbow 1 x 1".

(7) Burns over middle side of right thigh and knee 15" x 4".

(8) Burns over lateral side of left thigh 15" x 4".

(9) Face Swollen and livid with contusion on right side 5 x 5% O/D of Inj. No(2) and (9) extravasation of blood beneath bacillary present. Burnt areas around and firmly coagulated clot over abrasion and extensive infiltration in bruising present. All are A.M. in nature Int. Brain congested 1000 G Thorax' Bony cage intact lungs congested (right) 450 G (left) 350 G Heart congested 150G abdomen Intestines distended with gas liver congested 100 G spleen congested 120 G. Kidney congested each 750 G. Stomach empty bladder empty Uterus normal.

He issued Postmortem certificate Ex.P3.

(v) Subsequently, the absconding accused appeared before P.W.10, Village Administrative Officer and gave an extra judicial confession, and based on the extra judicial confession, he produced the accused before P.W.16, and P.W.16 arrested him and on such arrest, the accused has voluntarily given confession, based on the disclosure statement, the stolen articles were seized, and he identified the other accused, namely, A1 and A2. P.W.16 arrested A1 and A2 and on such arrest they voluntarily given a confession statement and based on the disclosure statement, he recovered some stolen articles from them. Thereafter, he sent the accused for Judicial custody. Then, he examined the witnesses and Doctor, who conducted postmortem autopsy and recorded their statements and after completion of investigation, he laid the charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 16 witnesses, exhibited 32 documents and 8 material objects were marked.

4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. Considering the above materials, the Trial Court come to the conclusion that based on the confession of the appellants, the stolen properties were recovered, as the stolen articles were available with the accused, and the same were recovered from the accused, the trial Court convicted the accused under Section 411 r/w 34 IPC. Since there is no other materials available to connect the appellants for rape and murder, the trial Court acquitted the accused from other charges levelled against them. Challenging the above said conviction and sentence, the accused are before this Court with this criminal appeal.

5. I have heard the learned counsel appearing for the appellants and the learned Government Advocate appearing for the respondent and perused the materials available on record.

6. Learned counsel appearing for the appellants would contend that the trial Court ought not to have convicted the accused under section 411 IPC in the absence of any materials to connect the murder, rape and the stolen articles were recovered from the accused. But, based on the confession statement of the absconding accused, the appellants were implicated in this case and mere recovery of the stolen articles and in the absence of any materials evidence, the trial Court ought to have acquitted the accused. Especially, the prosecution failed to prove the recovery of stolen articles from the accused and hence he prays for allowing this appeal.

7. Per contra, the learned Government Advocate appearing for the state would contend that the stolen properties were recovered based on the confession statement of the appellants and P.W.2, the husband of the deceased identified the stolen properties and there is no explanation for the possession of the stolen articles from the accused, the trial Court rightly convicted the accused for the offence under Section 411 r/w 34 IPC and acquitted all other charges levelled against them. Hence, he prays for dismissing the appeal.

8. I have considered the rival submissions.

9. The appellants are convicted only for the offence under Section 411 r/w 34 IPC on the ground that the appellants are in possession of stolen articles which was belongs to the deceased and the stolen properties were recovered from the accused based on their disclosure statement. The prosecution has examined P.W.6, the Village Administrative Officer, who is witness to the arrest and confession of the appellants and also the recovery of stolen properties from the accused. The admissible portion in the confession statement of the first accused is marked as Ex.29

and the seizure mahazar was marked as Ex.P10. The admissible portion of the second accused was marked as Ex.P11 and seizure mahazar was marked as Ex.P12. P.W.6, the Village Administrative Office, who is the witness to the arrest and recovery of stolen properties has clearly spoken about it. From the above materials, the prosecution has clearly proved that the stolen properties were in the possession of the accused and there is no explanation for the accused side for possessing the stolen property. Considering all those materials, the trial Court rightly convicted the accused under Section 411 r/w 34 of IPC and I have no reason to interfere with the well considered Judgment of the trial Court.

10. Sofar as the quantum of sentence is concerned, the accused were sentenced to undergo two years rigorous imprisonment. The learned counsel appearing for the appellants submitted that the appellants are poor persons and they have no bad antecedence and now they have to maintain big family and they are also in jail for more than eight months. Taking into consideration of the mitigating as well as aggravating circumstance and also the occurrence took place in the year 1996, I am of the considered view that the sentence could be modified to that of the period of sentence already undergone.

11. In the result, this criminal appeal is partly allowed. The conviction imposed on the appellants under Section 411 r/w 34 IPC by the learned Principal Sessions Judge, Namakkal dated 22.08.2002 in S.C.No.56 of 2002 is confirmed and the sentence imposed on the appellants are modified to the sentence the period already undergone.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Judge,
Namakkal.

2.The Judicial Magistrate-II
Court, Sankari

3.-d-Thro The Chief Judicial Magistrate
Namakkal District

4.The Superintendent Central Prison,
Salem

5.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.

6.The Public Prosecutor,
High Court, Madras.

copy to

The Section Officer
Criminal Section
High Court, Madras

+1 cc to Mr.V.Sairam Advocate sr 90061

Crl.A.No.1268 of 2002

aa08/06/2018



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