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Bail Slip : The Appellant Accused namely johnson S/o. Joseph was Directed to Released on Bail on 21/02.2013 made in mp 1/2013 in Crl. A. 43/2013 the fix of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.43 of 2013

Johnson
S/o.Joseph

... Appellant/Accused

-vs-

State represented by
The Inspector of Police,
G5-Secretariat Colony Police Station,
Kilpauk,
Chennai - 600 010.

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of learned Sessions Judge, Mahila Court, Chennai, passed in S.C.No.24 of 2012 on 19.12.2012.

For Appellant : Mr.P.Rajkumar Pandian

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, Chennai, passed in S.C.No.24 of 2012 on 19.12.2012, convicting appellant/accused for offence u/s.306 IPC and sentencing him to 10 years R.I. and fine of Rs.10,000/- i/d 6 months S.I.

2. The case of the prosecution is that the appellant/accused and the deceased are husband and wife. They had two daughters. Differences arose between them and hence, they were living separately. While so, on 11.02.2011, the accused went to the



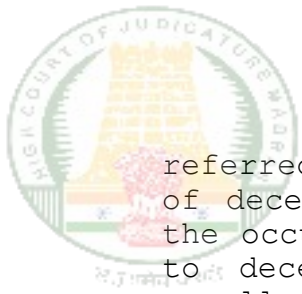
house of complainant and abused the deceased in bad language. On 12.02.2011 at about 8.15 a.m. and owing to shame, deceased committed suicide by hanging herself.

3. PW-1, mother of the deceased, preferred Ex.P1, complaint, on 13.02.2011 at 18.00 hours. PW-13, Sub Inspector of Police, registered a case in Crime No.131 of 2012 on the file of respondent for offence u/s.306 IPC. The First Information Report is Ex.P9. PW-14, Inspector of Police, took up investigation on 13.02.2011, visited the place of occurrence and in the presence of PWs.5 and 6, prepared Ex.P2 - Observation Mahazar and Ex.P10 - Rough Sketch. He examined PWs.1, 2, 4, 5, 6 and 11 and recorded their statements. He went to K.M.C. Hospital, examined PWs.9 and 10, Doctors, recorded their statements and obtained Ex.P6 - Copy of Accident Register and Ex.P7 - Death Intimation. On 14.02.2011, between 9 and 10.30 a.m., he conducted inquest in the presence of Panchayatdars and witnesses. The inquest report in Ex.P11. He sent the body of the deceased for postmortem through a Head Constable along with a requisition letter. He examined the Head Constable and PW-12, Doctor, who conducted postmortem and recorded their statements. On 15.05.2011, he arrested the accused at Perambur Railway Station and recorded his voluntary confession statement in the presence of PWs.7 and 8. Thereafter, he conducted physical search on the accused, produced him before Court and sent him for judicial custody. Upon completion of investigation, filing of charge sheet informing commission of offence u/s.306 IPC and on committal, the case was tried in S.C.No.24 of 2012 on the file of learned Sessions Judge, Mahila Court, Chennai.

4. Before the trial Court, prosecution examined PWs.1 to 14 and marked Exs.P1 to P11. One witness was examined on behalf of the defence and one exhibit was marked. On questioning u/s.313 Cr.P.C., the accused denied charges. Learned trial Judge, on appreciation of the evidence, under judgment dated 19.12.2012, convicted appellant/accused for offence u/s.306 IPC and sentenced him to 10 years R.I. and fine of Rs.10,000/- i/d 6 months S.I. There against, the present appeal.

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

6. PW-1, mother of deceased and de facto complainant has, in cross, stated that she learnt of the incident of 11.02.2011 through one of her grand daughters by name Emima and others then present. As against Ex.P1, her complaint, informing that she and others had intervened when appellant/accused set upon beating the deceased, his wife, on 11.02.2011 and that thereafter, appellant/accused went away, her evidence makes clear that she has not witnessed the occurrence of 11.02.2011 and her evidence there regards is at best hearsay. The grand daughter Emima



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referred to by her has not been examined. PW-2, younger brother of deceased, though, in chief, has deposed to having witnessed the occurrence of 11.02.2011, in cross, has spoken to proceeding to deceased's house on seeing a crowd gathered there, of appellant/accused presenting himself at 10.00 a.m. and of having been present when a dispute arose between the Village President and her sister, the deceased. He has admitted to habitually leaving for work at 09.00 a.m. and returning at 06.00 p.m. His evidence, in cross, that on 11.02.2011, he left late for work hardly merits acceptance. PW-3, father of deceased, has admitted to having been away at work from the morning of 11.02.2011 and of having returned at 05.00 p.m. He has also admitted to differences having arisen between appellant/accused and his wife, the deceased, a year before the occurrence and of appellant/accused not having visited since then. PW-3 has admitted to he, his wife, deceased and her children living in separate portions of the same house. PW-4, a neighbour, has deposed to frequent quarrels between appellant/accused and deceased and of appellant/accused having been at the house of deceased, quarrelling with her and leaving, carrying away his clothes on 11.02.2011. However, he has admitted that since 2010, appellant/accused did not visit the deceased. PW-5, another neighbour of deceased, has spoken to appellant/accused having visited the previous day and of his abusing and beating the deceased as a result whereof the deceased cried through the night. However, he has admitted to not informing the police of the arrival of appellant/accused at the deceased's house on 11.02.2011 and his quarrel with her in the course of his examination by police. To similar effect is the evidence of PW-6, who, admittedly is a relative of deceased. PW-11 is the major daughter of appellant and deceased. She too has spoken to an occurrence of 11.02.2011 when appellant/accused visited, abused and beat the deceased and collecting his clothes, went away. The defence has examined DW-1, a teacher at the school where PW-11 was studying and through marking of attendance register of 11.02.2011 established that PW-11 had attended school on such date. The testimony of PWs.1 to 6 and 11 examined to depose to an occurrence of 11.02.2011 where appellant/accused abused and beat the deceased does not stand judicial scrutiny. There is no acceptable evidence of alleged occurrence of 11.02.2011, which according to prosecution, was the cause of suicide by the deceased. No charge of abetment thereof punishable u/s.306 IPC would be attracted. PW-1, mother of deceased, has admitted to deceased having attempting to commit suicide by drinking diesel on an earlier occasion, while PW-2, brother of deceased, has admitted to deceased having attempted self-immolation by pouring kerosene over herself and of her having suffered a burn injury to the right hand. PW-4 has also informed knowledge of such incident. Therefore, it is clear that deceased was given to suicidal tendencies. The prosecution case lacks merit and



finding of conviction by trial Court stands wrongly arrived at.

The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Sessions Judge, Mahila Court, Chennai, in S.C.No.24 of 2012 on 19.12.2012, are set aside and appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bond(s), if any, executed by him shall stand cancelled.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahila Court,
Chennai.

2.The Inspector of Police,
G5-Secretariat Colony Police Station,
Kilpauk, Chennai - 600 010.

3.The Public Prosecutor,
High Court, Chennai.

4.The Metropolitan Magistrate, Egmore Chennai.

5.The Section Officer, Criminal Section, High Court Madras

+2cc to Mr.P.Rajkumar Pandian , Advocate, S.R.No.18486

Criminal Appeal No.43 of 2013

GMR(CO)

RRK(12/03/2018)