

Bail Slip

The Accused namely 1) Arunagiri, S/o. Chinnannan, 2) Palaniappan, S/o. Chinnannan, 3) Narasimman, S/o. Chinnannan, 4) Nagarajan, S/o. Chinnannan, (A1 to A4) were released on bail in CrI.MP.No.1/2008 dated 05.02.2008 in CrI.A.No.96 of 2008 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRIMINAL APPEAL No.96 of 2008

1.Arunagiri
2.Palaniappan
3.Narasimman
4.Nagarajan

: Appellants

Vs.

The State rep. By
Inspector of Police,
Tharamangalam Police Station
Nagavalli Police Station,
Cr.No.2/2005

: Respondent

Appeal filed against the Judgment of the learned Sessions Judge, Mahalir Court, Salem, in S.C.No.371 of 2006 dated 28.1.2008.

For appellants : Mr.S.Doraisamy

For respondent : Mr.R.Ravichandran
Government Advocate

J U D G M E N T

The appellant accused has preferred this appeal against the judgment of conviction and sentence dated 28.1.2008 in S.C.No.371/2006 by the learned Sessions Judge, Mahalir court, Salem, whereby, the appellants were convicted and sentenced as under :-

The first appellant was convicted for offence under Section 306 IPC and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo 3 months rigorous imprisonment and convicted for offence under Section 176 IPC and sentenced to undergo 6 months simple imprisonment and to pay a fine of Rs.1000/- in default to undergo one month simple imprisonment. The appellants 2 to 4 have

been convicted for offence under Section 176 IPC and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.1000/- each in default to undergo one month simple imprisonment.

2. The brief facts of the prosecution case is as follows :-

(a) The respondent police registered a case against the appellants for offence punishable under Section 306, 176 and 498A IPC. The case of the prosecution is that the first appellant married the deceased in 1999 and they were living together. They were blessed with two female children. Because there was no male issue, the first appellant scolded his wife. Due to unbearable mental agony, the deceased committed suicide by consuming poison on 4.1.2005 and without informing to the police and the other family members, the body of the deceased was burnt on the same day. On the complaint of P.W.1, a complaint came to be registered against the accused. After registration of the complaint, the respondent police took up investigation and examined the prosecution witnesses and after completing the same, charge sheet was filed against the accused. Thereafter, charges were framed by the Court, to which the accused persons pleaded not guilty and claimed to be tried. In order to prove the charges levelled against the accused, the prosecution has examined 11 witnesses, marked 12 documents as Ex.P-1 to Ex.P-12 and produced two material objects.

(b) After the examination and cross examination of the prosecution witnesses, the accused persons were examined under Section 313 Cr.P.C.. They denied the case of the prosecution. After considering the oral as well as documentary evidence and after hearing the parties, the learned trial Judge convicted and sentenced the accused as aforesaid.

3. Being aggrieved by the said judgment, the appellants have come forward with this appeal.

4. Heard the learned counsel for the appellants and the learned counsel for the respondent.

5. The learned counsel for the appellants would submit that except P.W.s 1 to 3, who are none other than the father, mother and brother of the deceased, no other independent witness has corroborated the version of P.W.s 1 to 3. P.Ws.1 to 3 have specifically admitted that the deceased had tried to commit suicide even earlier and there is no single averment about the alleged torture by A-1 and others in respect of dowry harassment. However, the learned Judge has drawn inference from the statement of P.W.1 as if A-1 tortured the deceased person since she was not capable of giving a male child and this torture forced her to end her life. However, such a statement is not available either in the chief or cross examination of P.Ws.1 to 3. Therefore, the order of the learned trial Judge is perverse and liable to be interfered with.

6. The learned public prosecutor would submit that though P.Ws.1 to 3 are father, mother and brother of the deceased, they have categorically stated that the accused have periodically tortured the deceased demanding dowry and that she has not given birth to male child. Unable to bear the mental agony, the deceased had committed suicide. The learned Public Prosecutor fairly admitted that the evidence of P.Ws.1 to 3 is not corroborated by any independent witness examined by the prosecution.

7. Heard both sides.

8. In the light of the above submissions, it has to be analyzed whether the prosecution has proved the guilt of the accused beyond all reasonable doubts.

9. The marriage of the 1st appellant and the deceased is not disputed. They were blessed with two female children. It is also admitted fact that immediately after the birth of the second child, the deceased was done sterilization operation. The lower Court has arrived at a conclusion that there is no dowry harassment, based on the report of the Revenue Divisional Officer. Hence the appellants were acquitted of charges under Section 498A IPC. However, the lower Court convicted them under Section 306 and 176 IPC.

10. A perusal of statement of P.Ws.2 and 3 makes it clear that the possibility of the deceased taking such an extreme step with regard to the torture for not giving male child has not been established. When that being the position, even assuming that there was a torture, in my view, the same would not amount to incitement or abetment to force a person to commit suicide.

11. It is curious to note that P.Ws.2 and 3, mother and brother of the deceased were very much available in the matrimonial home of the deceased, after her death. It is stated that P.W.2 requested the family of the accused not to cremate the body till P.W.1, father of the deceased arrived. Though the date of occurrence is 4.1.2005, complaint was lodged only on 8.1.2005, by P.W.1 at about 10 p.m. P.W.2 was very much available in the house of the accused and she participated in the cremation of her daughter. However, she did not file any complaint immediately.

12. Abetment is a mental process of instigating or inducing a person to do a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, charge under Section 306 IPC cannot be inferred.

13. The learned Judge has held that the deceased underwent mental agony due to harassment for not giving male child and birth of two female children without any basis. However, from the evidence of P.Ws.1 to 3, no such specific averment is available. Even on a perusal of the report of the Revenue Divisional Officer, marked as Ex.P-4, there is no whisper about dowry harassment. The enquiry by Revenue Divisional Officer

revealed that there is no proof to show that A-1 tortured the deceased for not giving him a male child. Further, P.W-6, Doctor, has stated in his cross examination that the deceased person has taken treatment from him on 5 or 6 occasions for stomach pain. P.W.9 Doctor, who did the biopsy has stated in his evidence that no poison was identified in the bones collected from the burial ground and he was not in a position to reveal the reason for death. Since there is no evidence connecting the appellants with the crime, they are liable to be acquitted.

14. In the result, the criminal appeal stands allowed and the conviction and sentence imposed on the appellants/accused 1 to 4, vide judgment dated 28.1.2008, in S.C.No.371 of 2006, by the learned Sessions Judge, Mahalir Court, Salem, is set aside and the appellants are acquitted. Fine amount if any paid by the accused shall be refunded to them. Bail bonds if any executed by them and sureties shall stand cancelled.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate-I, Mettur.
 2. The Sessions Judge, Mahalir Court, Salem.
 3. The Inspector of Police,
Tharamangalam Police Station
Nagavalli Police Station, Salem.
 4. The Superintendent, Central Prison, Salem.
 - 5.The Public Prosecutor High Court, Madras.
- + 1 cc to M/s. S. Doraisamy, Advocate Sr.77410

Cr1.Appeal No.96 of 2008

RK(CO)
EU(07/12/2018)