

Bail Slip

That the Appellant/Accused 1. Senthil Kumar S/o Kalimuthu 2.Angammal W/o Kalimuthu both are residing at thonthoni Village, Udumalpet Taluk, Coimbatore, District was directed to released on bail as per order of this court dated 20/05/2009 and made in CrI.MP.No.1/2009 in CrI.A. No.190/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.190 of 2009

1.Senthil Kumar

2.Angammal

... Appellants/Accused 1 & 2

Vs.

State by

The Inspector of Police,
All Women Police Station,
Udumalpet,

Coimbatore District.
(Crime No.3 of 2006)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment passed in S.C.No.367 of 2006 on the file of the Sessions Judge, Magalir Neethimandram, Coimbatore, dated 26.03.2009.

For Appellants : Mr.B.Kumarasamy

For Respondent : Mrs.T.P.Savitha

Government Advocate (CrI.Side)

JUDGMENT

This appeal is directed against the Judgment of conviction dated 26.03.2009 made by the Learned Sessions Judge (Magalir Neethimandram), Coimbatore.

2.The appellants herein/accused are son and mother respectively, who faced charges in the above Session Case for offences of treating the 1st appellant's wife Veeraselvi cruelly and abetting her to commit suicide.

3.It is the prosecution case that the marriage between the 1st appellant/1st accused Senthil Kumar and one Veeraselvi had taken place in the year 2005. The 1st appellant herein and his mother namely Angammal, the 2nd appellant demanded pongal seervaraisai and gold ring and gold chain from Veeraselvi. The appellants ill-treated Veeraselvi making above demands and thereby due to cruelty faced at the hands of appellants, Veeraselvi committed suicide by hanging on 19.02.2006 at 5.00 P.M. Thus the appellants being root cause for the death of Veeraselvi such that treating her cruelly, caused her to commit suicide. Hence FIR was registered against the appellants in Crime No.3 of 2006.

4.Thereafter final report was laid before the Learned Judicial Magistrate No.I, Udumalpet in PRC.No.18 of 2006. As the offences being exclusively triable by the Court of Sessions, the case was committed to the learned Principal District and Sessions Judge, Coimbatore and the same was made over for Trial and disposal before the Trial Court namely the learned Sessions Judge, (Magalir Neethimandram), Coimbatore and was taken on file in SC.No.367 of 2006.

5.The Trial Court framed charges under Sections 498-A and 304-B of IPC and the prosecution in order to substantiate their case, totally examined 12 witnesses and marked 18 Exhibits and produced one material object namely Violet Colour Saree.

6.PW-1 Kandhasamy is the father of the deceased Veeraselvi. He is the first informant in the above case. PW-4 namely Senthil Kumar is the brother of the deceased. PWs-5, 6 and 7 namely Mysamy, Subramaniyan and Kittusamy are brothers of PW-1. PW-8 is the wife of PW-6 Subramaniyan. PW-9 Chitra is Police Constable. PW-10 Venkatesan is the Sub-Collector who did inquest and furnished enquiry report. PW-11 Umamaheshwari is Sub-Inspector of Police who registered FIR and PW-12 Gopal is Deputy Superintendant of Police conducted investigation and filed charge sheet. PWs-2 and 3 namely Mariyammal and Krishnan are doctors who made postmortem of the deceased Veeraselvi.

7.The Trial Court on appraisal of the oral and documentary evidence found the appellants are guilty of said offences and thereby convicted and sentenced both the appellants to undergo 3 years Rigorous Imprisonment and Rs.2,000/- fine for the offence under Section 498-A of IPC, each in default to undergo Simple Imprisonment of 6 months and 10 years Rigorous Imprisonment and

fine of Rs.5,000/- under section 304-B of IPC, each in default to undergo Simple Imprisonment of 6 months.

8. Aggrieved over the said conviction and sentence the appellants are before this Court by way of this criminal appeal challenging the conviction as baseless contending them to be innocent and have not committed any offences. It is their specific contention that the above conviction against them is unsound, illegal and unsustainable and the same is made against the Criminal Jurisprudence where the prosecution has absolutely failed to establish their case.

9. It is the case of appellants that the deceased Veeraselvi suffered out acute stomach pain and because of it she committed suicide by hanging. In actual on seeing the deceased hanging, the 1st appellant and his father rushed to save her life she was taken to the hospital by car. Whereas contrarily prosecution has created a story as if Veeraselvi faced cruelty and ill treatment at the hands of appellants and as though there was dowry demand. They also plead not responsible for the death of deceased contending that they did not harass or committed cruelty to the deceased demanding dowry or any articles.

10. Per contra, the Learned Government Advocate (Criminal Side) would submit that only on due apprisel of oral and documentary evidence adduced by prosecution and that the prosecution has established chain of events and proven their version through PW-1 to PW-12 and vide Exhibits PW-1 to PW-18 has established their case beyond reasonable doubt the conviction was made by the Trial Court.

11. It is his further contention that the deceased Veeraselvi faced harassment and dowry demand at the hands of appellants. Only due to said harassment and cruelty, Veeraselvi was driven to commit suicide. Thus he prays for dismissal of criminal appeal by contending that the conviction and sentence passed against the appellants are just and proper.

12. I heard Mr. B. Kumarasamy, learned counsel for the appellants and Mrs. T. P. Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

13. It is seen that the reason projected by the prosecution as to cause of Veeraselvi's suicide is that there was demand of Pongal seervarisai and demand for gold chain and ring. According to the prosecution as the deceased was not in a position to fulfill said demand, she was put to harassment by the appellants.

14. Therefore this Court finds deem fit to scrutinize the impugned order and the deposition made by the prosecution witness in this regard and hence it would be useful to firstly look into the complaint given by PW1, the father of the deceased

Veeraselvi.

15. In Exhibit-P1 there is no averment found denoting any dowry demand. Further in Exhibits-P2 to P4 the Medical and Forensic certificate denotes that a rope mark is seen in right ear and opined that the deceased would have died due to hanging.

16. Exhibit-P5, is the statement made before P-10 by Panchayathar who appeared to be the inmates of street. It is their version that they heard some issue developed in appellant's family with regard to demand of household articles. They also opined that the deceased Veeraselvi might have committed suicide out of ill treatment which might have been committed by the appellants. Thus their statement according to this Court is unsafe to be relied upon as it is nothing but hear say statement.

17. On further perusal of documents from Exs-P6 to P8 though certain allegations were made against the 2nd appellant, the mother-in-law, in as much the 1st appellant concerned there is no allegation made against him that he demanded household articles or dowry. The sole allegation leveled against the 1st appellant that he failed to defend the deceased from his mother's ill-treatment.

18. Whereas it is seen that the conviction over appellants is made by the Trial Court relying upon evidence of PW-1, PW-4 and PW-6 to PW-8 and also holding that the accused has not suggested with the medical officer as to alleged stomach pain. The Trial Court further held that if at all Veeraselvi had stomach pain, symptoms would have revealed during autopsy. The Trial Court while convicting the appellants also relied upon decisions reported in 2008 (2) LW CrL 988 and CDJ 2008 SC 767 wherein it is observed that even when position of evidence is found to be deficient the remainder is sufficient to prove guilty of accused notwithstanding acquittal of other accused.

19. The Trial Court further by adopting the formula of chaff can be separated from grain scrutinized evidence PW-1, PW-4 and PW-6 to PW-8 holding that the legal maxim "falsus in uno in omni bus" has no application in India and witnesses cannot be branded as liars.

20. On careful perusal of records, it is seen that PW-12 namely Gopal the Deputy Superintendent of Police who investigated the offence and filed charge sheet has deposed that PW-1 and PW-4 during his enquiry they have not stated any alleged dowry demand made by the appellants. It is equally importance to state that he had not taken into account of R.D.O.'s Report during his investigation.

21. In as much as the enquiry conducted by PW-10 R.D.O., it is seen that from Ex-P5 the joint statements of Panchayatharas made ready by R.D.O. It has no evidentiary value, since being a hearsay evidence and uncertain statements.

22. In the case on hand not even single neighbour to the accused has examined as prosecution witnesses to establish that there was a quarrel between the 1st appellant, his wife and that deceased Veeraselvi faced perhaps harassment as projected by the prosecution.

23. In fact all the witnesses namely PW-1, PW-4 to PW-8 are the family members of the deceased Veeraselvi and no independence witnesses are examined in the case on hand. No doubt that evidence of witnesses since being a relative of victim cannot be ignorant, at the same time the Court has to see that the evidence is true or exaggerated. In this context it would be useful to say that PW-1, PW-4 to PW-8 have deposed that the appellants have strangled the deceased causing her death. Thus their version is nothing but improved and exaggerated intended to cause the appellants punished.

24. Thus it is pertinent to note that when the medical evidence discloses that it was suicide by hanging but PW-1 and PW-4 had deposed that the accused/appellants strangled the deceased and thereby she died.

25. Further with regard to PW-4's version, it is found that there are contradicting statements such that in one occasion PW-4 says that his sister Veeraselvi's hair was cut down and she was humiliated for dowry. However, there is no such say by him during investigation and statement. In yet another aspect the PW-4's evidence fails for the reason that the statements made by him that he received knowledge of his sister's death from nurse who met him in road while PW-4's bike broke down while his way following his sister who was taken to the hospital. Whereas PW-12 the investigation officer made clear that PW-4 has not stated any alleged cut down of hair of deceased Veeraselvi or as such during bike break down he received the death news of his sister and he also further made clear that PW-4 had not stated anything about the bike break down to him.

26. At this juncture, it is equally important to state that PW-1, PW-4 and PW-6 to PW-8 made clear that some jewels and other Seervarisai were provided to deceased only as part of customary practice.

27. In as much as PW-8's evidence is concerned, her statement under 161(3) of Cr.P.C. and deposition contradicts as to demand and alleged manner of the occurrence. At the same time PW-7 namely Kittusamy younger brother of PW-1 Kandasamy is found to be hearsay evidence.

28. Though according to Ex-P1 complaint, it was usual for PW-1 to PW-4 to meet deceased Veeraselvi every week from her marriage, absolutely there is no whisper about alleged dispute regarding Pongal seervarisai in the complaint. The introduction of such allegation at later point of time, while giving statement during investigation is an afterthought, introducing new prosecution theory.

29. In so far as Pw-6 evidence is concern, PW-6 Subaramaniyan who happened to be elder brother of PW-1 and PW-5 deposed that deceased Veeraselvi was happy in her matrimonial house, he further deposed that he has not given any statements to the investigation officer as to alleged money dispute and cruelty.

30. It is evident that during cross examination PW-1, PW-4 and PW-5 have stated that the deceased Veeraselvi lead happy life with the 1st appellant. However, it is their case that 2nd appellant has harassed the deceased Veeraselvi.

31. Yet another contention of appellants that the PW-1's family suffered out of tendency to commit suicide. Projecting as such, the appellants contented that PW-1's wife i.e., deceased Veeraselvi's mother had also committed suicide in deceased Veeraselvi family. Though the fact was disputed by PW-1 stating that his wife died out of an accidental slip into well while drawing water, the same remains contradicted by PW-6 conforming that PW-1's 1st wife i.e., deceased Veeraselvi mother committed suicide by falling into well.

32. It is noteworthy that PW-1 has admitted that as per their caste custom Pongal Seervarisai was done. Hence there will be no harassment with regard to one another reason projected behind harassment of deceased Veeraselvi that there was dispute with regard to separate living isolating from A2. In this regard it is relevant to note that PW-1 during his cross examination has accepted to send the 1st appellant and deceased Veeraselvi to live separately from 2nd appellant. In as much as the medical evidence concerned the doctors PW-2 and PW-3 who have conducted postmortem has opinion that the death was due to hanging.

33. Though the Trial Court has taken aid of few Judgments in its support holding that Chaff can be removed from grain, the same cannot be done in a piecemeal manner such that drawing adverse statements and deposition alone. Though minor discrepancy can be disregarded, the evidence at the same time should be credit worthy. More so, here it is not the case of deficient evidence, but a case of contradicting evidence, therefore the Judgments relied by the Trial Court will have no application on appellant's case.

34.As seen above, version of PW1, PW4 to PW8 is found to be exaggerated and improved from that of their statements by introducing a new case as though it is not a suicide but a murder by strangulation. Though the evidence of interested witness cannot be ignored for being relative, but if their version stands improved, contradicting and untrustworthy and an interest is established over them to see the accused be convicted. Their evidence is unsafe to rely. But the prosecution though endeavored to cite interested witness but had not taken step to examine a neighbor of the appellants. Whereas in this regard it is seen that the finding of the Trial Court is that a neighbor need not be examined as it would be an unnecessary harassment in letting evidence. Absolutely such approach is erroneous and unacceptable. Based on the facts and circumstances the best evidence has to be produced by the prosecution.

35.As seen above, there are major contradictions in prosecution story and corresponding evidence adduced before the Trial Court and thereby the prosecution has failed to establish their version beyond reasonable doubt. Hence by giving the benefit of doubt to the accused, they are acquitted from all the charges.

36.In the result:

(a) this Criminal Appeal stands allowed by setting aside the judgment of conviction and sentence imposed in S.C.No.367 of 2006 dated 26.03.2009 on the file of the learned Sessions Judge, Magalir Neethimandram, Coimbatore;

(b) the appellants/accused are acquitted from all the charges punishable under Sections 498A and 304 B of I.P.C.

(c) Fine amount if any paid by the appellants/accused shall be refunded.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vs

To

1. The Judicial Magistrate, No.I, Udumalpet.
2. The Chief Judicial Magistrate, Coimbatore (for information)
3. The Sessions Judge, Magalir Neethimandram, Coimbatore.

4. The Superintendent, Central Prison, Coimbatore.
 5. The Superintendent, Central Prison,for Women, Vellore.
 6. The Public Prosecutor, High Court, Madras.
 7. The Inspector of Police, All Women Police Station,
Udumalpet, Coimbatore District.
 8. The Section Officer, Criminal Section, High Court, Madras.
- +1cc to Mr.S.Gunalan, Advocate SR.No.77762

Crl.A.No.190 of 2009

AD (CO)
GMY (23/01/2019)



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