

Bail Slip

The Appellant/1st Accused (viz Ashok in S.C.No.140/2010 dated 23/08/2011 on the file of the Principal Sessions Judge, Cuddalore) was directed to be released on Bail in and by the order of this court daed 15-09-2011 in Crl.MO.No.1/2011 in Crl.A.No.550/2011 on the file of the High Court of Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.550 of 2011

Ashok

Appellant / Accused No.1

Vs

State rep by
Deputy Superintendent of Police
Banruti
Cuddalore District

Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure code, to set aside the Judgment and conviction dated 23.08.2011 by the learned Principal Sessions Judge, Cuddalore in SC No.140 of 2010 and acquit the appellant.

For Appellant : Mr.R. Shanmugasundaram for
Mr. R. Thiagarajan

For Respondent : M/s. T.P. Savitha
Government Advocate (Criminal Side)

J U D G M E N T

The appellant is the 1st accused in SC No.140 of 2010 on the file of the learned Principal Sessions Judge, Cuddalore. Along with one another accused, this appellant stood charged for the offence under Section 306 IPC r/w Section 3 (2) (V) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By a Judgment dated 23.08.2011, the trial Court convicted him under Section 306 of IPC and sentenced to undergo 5 years of Rigorous imprisonment and imposed a fine of Rs.1,000/-, in default to undergo 15 days simple imprisonment.

Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2) The Case of the prosecution in brief is as follows:-

That the accused belongs to Hindu Vanniyar community and that the deceased belongs to Hindu Adi-Dravidar community. The 1st accused and the deceased had been in love with each other, while they were studying in a college at Cuddalore. On 26.03.2009, while the deceased was in the "Chellammal's house" by around 7.30 pm, contacted the appellant overphone and had requested to get married to her. For that, the appellant replied that "She belongs to Harijan community and that he belongs to Vanniar community. If he marries her no one would respect him in his place. Further, his uncle Dhanasekar is an obstacle for marrying her". Having not expected such a reply, the deceased felt hurt, wounded and humiliated that having known that she is a Harijan, he had been in love with her, but now has cheated her. Pursuant to such agony, she became broken hearted and committed self immolation by pouring kerosene over her body and lit herself. With extensive burn injuries, she was admitted in the Intensive Care Unit of Jipmer Hospital at Puducherry and despite treatment succumbed to her injuries, on 02.04.2009 by 22.30 hours.

3) In the meantime, on 27.03.2009 at about 11.00 am, PW 13 Subramaniam, who is the Sub Inspector of Police, Kadampuliyur Police station received an intimation, regarding the occurrence from the Jipmer Hospital. Immediately, he went to the said Hospital and in the presence of Dr. Subasini, he recorded the statement from the deceased. Further, he obtained a Certificate from the Doctor in respect to the consciousness of the deceased. Ex.P.8 is the statement given by the deceased. After recording the statement, he was returned to the police station and registered a case in Cr.No.104 of 2009 under Section 4 of Womens Harassment Act r/w 506 (ii) IPC. E.P.9 is the printed First Information Report. After registration of the case, he submitted the copy of the First Information Report before the Deputy Superintendent of Police for investigation.

4) PW 14, A.R. Sirajudeen, Inspector of Police, Kadampuliyur Police Station received a copy of the First Information Report and took up the same for investigation. On the same day, he went to the Maligampattu colony, in which the occurrence had happened and in the presence of PW 6 Rathinasamy and one Kumar, he prepared Observation Mahazar under Ex.P.1. Further, he drawn Rough Sketch under Ex.P.10, in the presence of the same witnesses he recovered empty kerosene can under the cover of Mahazar. Ex.P.2 is the Mahazar prepared by the Investigating Officer. He examined the witnesses and recorded their statements. On the same day, at about 8.30 pm, he went to the Jipmer Hospital, Pondicherry and recorded the statement from

the deceased. After completing the above process, on 30.03.2009, he arrested the appellant and made arrangement for sending him to the judicial custody. Thereafter, on 02.04.2009 at about 11.30 pm, he received the death intimation of Tamilselvi. On 03.04.2009, he went to the Jipmer Hospital and prepared Inquest Report under Ex.P.11. After preparation of Inquest Report, he entrusted the dead body to PW 12 for conducting Autopsy. Further, he sent a letter to the Hospital authorities for completing the post mortem.

5) PW 8 Dr. Amburose , on 03.04.2009 on receipt of requisition letter given by the Investigating Officer, he conducted autopsy over the body of the deceased and found the following injuries

Superficial to deep burns partly covered with purulent exudate is present over the scalp, face, neck, entire trunk including both axillae, and the external genitalia. Both upper limbs excluding the finger tips and both lower limbs excluding the soles.

She gave opinion regarding the cause of death as Septicemia due to burns. Ex.P.5 is the Post Mortem Report.

6) In continuance of the investigation, PW 14 altered the section of law as 4 (B) TNPHW Act and 3 (2) (V) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Ex.P.12 is the Alteration Report. After making alterations, as per the order of Superintendent of police, Cuddalore, he handed over the case records to Deputy Superintendent of Police for further investigation.

7) PW 15 Arularasu, the then Deputy Superintendent of Police, Banruti, as per the order passed by the Superintendent of police under Ex.P.13, took up the case for further investigation. On 09.04.2009, he visited the scene of occurrence and examined the witnesses and recorded the further statements from PW 1 to PW 3 and from Jayakumar and Venkatesan.

8) On the next day, he altered the sections of Law as 306 IPC and 3 (2) (V) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On 22.05.2009, he examined the Tashildar, who issued the Community Certificate and recorded his statement. On completion of investigation, he came to the positive conclusion that the accused and his father committed the offences under Sections 306 IPC and 3 (2) (V) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and filed a Final Report.

9) Based on the above materials, the trial Court framed charges against the accused as indicated in the 1st para

of this Judgment and the accused denied the same. In order to prove the case on the side of the prosecution, as many as 15 witnesses were examined as PW 1 to PW 15 and 14 documents were marked as Ex.P.1 to Ex.P.14. Besides, 3 material objects.

10) Out of the above said witnesses, PW 1, Saran Singh is the brother of the deceased Tamilselvi. He has stated that on 26.03.2009, at about 7.30 pm, when he was in the backyard of his grand mother "Chellammal's House", he heard the hues and cries of the deceased Tamilselvi. Immediately, after hearing the noise, he rushed to the occurrence place and on seeing the deceased she was burning. Immediately, he switched off the fire and took the deceased to the Jipmer Hospital. On enquiry, the deceased told him that herself and the appellant had fall in love with each other. Now, due to the communal difference, he refused to marry her. Further, he instigated her for committing the suicide. Subsequent to that, despite the treatment given to the deceased, she was died on 02.04.2009.

11) PW 2 Chellammal is the grand mother of the deceased Tamilselvi. During the time of occurrence, the deceased was stayed in her house and continuing her education. In otherwise, she gave evidence about the occurrence in support of the evidence given by the PW 1.

12) PW 3 Chakravarthy is the father of the deceased Tamilselvi. He has also stated about the occurrence as stated by PW 1. In the same way, PW 4 Vijaya, who is the daughter of PW 2 has stated about the occurrence in support of PW 1 to PW 3. PW 5 is the relative of the deceased. In the trial Court, he has stated that in the year 2009, he came to know about the occurrence and went to the Government Hospital at Banruti for seeing the deceased. He has further stated that on enquiry, the deceased told him that she and the appellant had fall in love with each other, now due to the communal difference, the appellant is refused to marry her.

13) PW 6 Rathinasamy is the resident of Maligampatti. He has stated that in the year 2009, one day evening 5.00 pm, Deputy Superintendent of Police, Banruti had come to the occurrence place and seized the kerosene can under Ex.P.1, in which he and one Kumar have signed.

14) PW 7 Dr. Aravindh who is the Assistant Surgeon of Banruti Hospital has stated that on 26.03.2009, at about 8.15 pm, when he was in duty, the relatives of the Tamilselvi brought her to the Hospital for getting treatment. Further, he stated that on enquiry, he came to know that due to the love failure, she attempted to commit suicide, he gave first-aid to the deceased and sent her to the Government Hospital, Cuddalore for

further treatment. Ex.P.3 is the Accident Register copy issued by him.

15) PW 8 Dr. Amburose has stated about the process of post mortem. The injuries sustained by the deceased was mentioned in Ex.P.5 Postmortem report. He gave opinion that the cause of death is Septicemia due to burn injuries and its complications.

16) PW 9 Venkatesan is the resident of Maligampatti has stated about the occurrence as stated by PW 1.

17) PW 10 Dr. Jagadeeshwaran is working as Chief Doctor at Jipmer Hospital. He has stated that on 26.03.2009, one Dr. Subhasini made a certificate as the statement of the deceased was recorded in her presence. Further, it was mentioned that the deceased was in full conscious at the time of recording the statement by the sub-inspector.

18) PW 11 Babu, the then Tahsildar of Banruti has stated that on 21.05.2009, he received a requisition Letter from the Deputy Superintendent of Police, Banruti for issuing the Community Certificate to the appellant as well as to the deceased. He has further stated that on enquiry he came to know that the appellant belongs to the Vanniyar Community and the deceased belongs to the Adi-Dravidar Community, which was recognized as Scheduled Caste. Ex.P.7 is the Community Certificate issued by PW 11.

19) PW 12 Arumugam is working as the special sub inspector in Kullanchavadi police station. He has stated that on 03.04.2009, the investigation officer in this case entrusted the dead body of Tamilselvi with a direction to hand over the same for postmortem. PW 13 to PW 16 are the police officers, they have stated about the registration of the case, details of investigation and about the filing of Final Report.

20) The learned trial Judge with reference to the incriminating materials adduced by the prosecution, questioned the accused under Section 313 (1) (b) of Cr.P.C, for which he pleaded not guilty. However, the appellant and the other accused in this case did not chose to examine any witnesses nor marked any documents on their side.

21) The learned trial Judge on perusal of the materials placed and considering the arguments advanced on both sides, convicted and sentenced the appellant as stated supra, challenging the same, the present appeal has been filed.

22) I have heard Mr.R. Shanmugasundaram & Mr. R. Thiagarajan learned Counsel for the appellant, Ms. T. Savitha, learned Government Advocate (Criminal Side) for the

respondent and perused the records carefully.

23) The learned Counsel for the appellant would contend that as per the case of prosecution, in the statement recorded from the deceased one Dr. Subashini was attested as "Dyeing Declaration was recorded in my presence, patient was full conscious". But after the signature time and date has not been obtained by the special sub inspector who recorded the statement from the deceased. Moreover, the Doctor who attested the said statement has not been examined as witness in the trial Court, which is fatal to the prosecution. Further, he would contend that the evidence of PW 1 to PW 4 is having lot of contradictions, which would affect the case of the prosecution entirely. According to him, the prosecution has not proved their case beyond all reasonable doubts.

24) Per contra, the learned Additional Public Prosecutor would contend that PW 1 to PW 4 are the eyewitnesses to the occurrence, who are all none other than the family members of the deceased. The occurrence took place in the backyard of the PW 2's house and hence the presence of the PW 1 to PW 4 at the time of occurrence is proved and their evidence is corroborated through the medical evidence. According to him, the trial Court is rightly convicted the appellant under Section 306 of IPC. Therefore, there is no need to interfere with the conviction and sentence passed by the trial Court.

25) I have considered the rival submissions made on either side.

26) As per the evidence given by PW 11 Tahsildar, Banruti and as per the contents of Ex.P.7 Community Certificate, the prosecution proved that the appellant belongs to the community of Vanniyar and the deceased belongs to the community of Adi-Dravidar, which was recognized as the scheduled caste. The said fact was not disputed on the side of the appellant. Further, as per the case of prosecution, the cause of death is Septicemia due to burn injuries. In the said circumstances, the trial Court came to the conclusion that before the occurrence, the appellant instigated the deceased for committing suicide. For proving the said act, the contents of the statement given by the deceased and the evidence given by the PW 1 to PW 5 are available in this case. In the statement given before the special sub inspector, the deceased has specifically stated before the occurrence, she had a friendship with the appellant for a period of 1 year. In otherwise, she did not say about the love affair with the appellant. Now, a question will be arose before this Court under what capacity the deceased asked the appellant for marrying her. Usually, a friend cannot be put a such type of request before her friend. Actually, the said

statement recorded by the special sub inspector is the earliest document for this case. In the said document, the deceased did not say anything about the love affair with the appellant . Further more, in the said statement, the Doctor who attested about the mental state of the injured has not been examined as witness to prove the contents of the said statement. Even though, the endorsements made by the said Doctor is proved by the evidence of another doctor. On close scrutiny of the said document, reveals that there is no time, date was written by the doctor. So, initially the contents of the statement did not prove the nature of the relationship had by the deceased with the accused.

27) Further, the alleged occurrence is happened on 27.03.2009. Subsequently, the death had happened on 02.04.2009. In the intervening period, the Investigating Officer did not take any steps for recording the statement of the deceased through the judicial officer. Even the hospital authorities did not make any arrangements for intimating the occurrence to the judicial authorities. In this regard, PW 12 who is the Investigating Officer simply stated in his cross examination as he did not take any steps to record the dying declaration. So the inaction on the part of the Investigation officer is liable for disciplinary action.

28) Secondly, as per the case of the prosecution, prior to the occurrence, the deceased contacted the accused through mobile phone. But in order to prove the same , the call details of the mobile phones, have not been recovered by the Investigating officer. For which, PW 15, the Deputy Superintendent of police who conducted further investigation has stated in the cross examination as he did not collect the details, which also shows the investigation in this case progressed by the Investigating officer without following the criminal jurisprudence. In fact, PW 1 to PW 5 gave evidence in the trial Court as the deceased had stated that she is having love affair with the accused. Otherwise, in order to prove the contact between the accused and the deceased no materials collected during the time of investigation by the Investigating officers. PW 1 to PW 5 being the close relative of the the deceased alone gave evidence in support of the prosecution. Further, they gave evidence only based upon the alleged statement said to have been told by the deceased. In otherwise, in order to prove the same, no independent witnesses have been examined on the side of the prosecution to prove the nature of the relationship between the accused and the deceased.

29) In the said circumstances, it is relevant to see the Judgment of our Honourable Supreme Court reported in (2011) 3 Supreme Court Cases 626 - M. Mohan Vs. DSP, it is observed as

follows

"17)abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract Section 306 IPC there has to be a clear mensrea to commit the offence. It is further stated that the present case is squarely covered by the above decision as even if the case of the prosecution is taken to be true and the finding of the High Court that there are no elements of cruelty or dowry-related harassment and that the witnesses have improved upon their earlier statements is ignored, then also Section 306 IPC is not attracted in the facts of the present case."

Therefore, following the principles laid down by our Honourable Apex court, in this case also there is no evidence is available from the evidence of prosecution witnesses to show the accused intentionally aiding the deceased for committing the suicide. Without proving the nature of relationship between the deceased and the accused, we cannot come to the conclusion that only due to the failure of love, she provoked and committed suicide. In fact, on go through the entire materials supplied on the side of the prosecution, absolutely there is no evidence for accepting the contention that accused and the deceased are lovers. Even though, the Investigating Officer is having sufficient time for collecting the relevant materials, to show the love affairs, atleast for creating the presumption in favour of the victim, the Investigating officer did not take any steps to collect those materials.

30) As per the evidence of PW 13, the statement which is the complaint for this case have been recorded by him in the presence of Doctor. In the said document also, the deceased did not say anything about the love affairs with the accused. Further more, as already discussed, the doctor who attested in the said statement has also not been examined as a witness. Further, in the said document, the date and time in which the statement was recorded as also been not mentioned. Therefore, the validity of the said document also doubtful.

31) In any event, in order to connect the accused with the alleged crime, relevant materials are not available. The trial court without considering the said aspect, convicted the accused, which is liable to be set aside. Accordingly, the appeal is allowed, the conviction and sentence imposed upon the

appellant by the learned Principal Sessions Judge, Cuddalore in SC No.140 of 2010 dated 23.08.2011 is hereby set aside and the appellant is acquitted. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellant.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II, Panruthi
2. The Chief Judicial Magistrate, Cuddalore District
3. The Principal Sessions Judge, Cuddalore
4. The Superintendent, Central Prison, Cuddalore.
5. The Deputy Superintendent of Police
Banruti, Cuddalore District
6. The Public Prosecutor
High Court, Madras

Copy To

The Section Officer, Criminal Section,
High Court, Madras-104

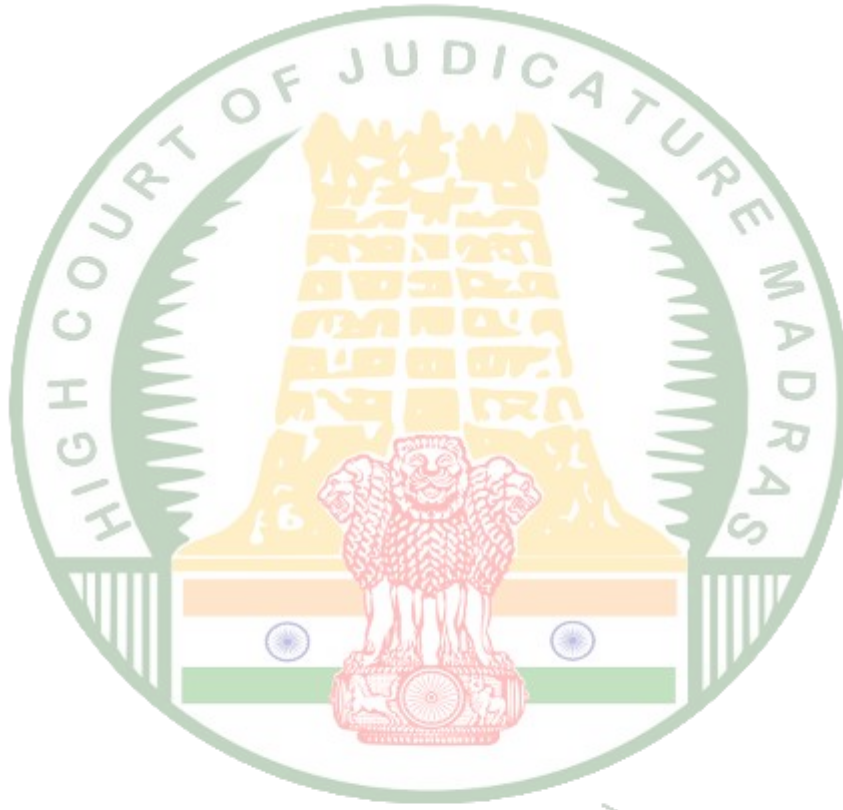
+1cc to Mr.R.Thiagarajan, Advocate SR.No.75956

Criminal Appeal No.550 of 2011

SSD(CO)

GMV (20/12/2018)

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