

Bail Slip

The Appellant/Accused viz., Dev Anand age 39 years S/o.Binja Mohan is released on bail as per order of this court, dated 1/12/2011 made in M.P.1/11 in CrI.A.No.694/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 13.07.2018

JUDGMENT PRONOUNCED ON : 05.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.694 of 2011

Dev Anand (Age 39/2011)

S/o Binja Mohan

Appellant / Accused

Vs

State by the Inspector of Police

K 4 Anna Nagar Police Station

Chennai

(Crime No.422 of 2006)

Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure code, to set aside the Judgment and conviction dated 29.10.2011 by the learned Sessions Judge, Mahalir Neethimandram, Chennai in SC No.19 of 2007 and acquit the appellant.

For Appellant

: Mr.P. Kumaresan

For Respondent

: Mr. G. Ramar

Government Advocate(Criminal Side)

J U D G M E N T

The appellant is the sole accused in SC No.19 of 2011 on the file of the learned Sessions Judge, Mahalir Neethimandram, Chennai. He stood charged for the offence under Sections 323, 506 (ii) and 306 IPC. By a judgment dated 29.10.2011, the trial Court convicted him under Sections 323 and 306 IPC and acquitted

for the offence under Section 506 (ii) IPC. He has been convicted under Section 323 IPC and sentenced to undergo 1 month rigorous imprisonment with a fine of Rs.500/- in default to undergo 1 week further simple imprisonment. Further, he has been convicted under Section 306 IPC and sentenced to undergo 5 years rigorous imprisonment with a fine of Rs.10,000/- in default to undergo 6 months 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:-

PW 1 Thanigaivelan and PW 2 Ranjana are the parents of deceased Vaishnavi. Prior to the occurrence, the deceased and the accused are Co-artists in TV Serials. 10 days prior to the occurrence, the deceased along with her mother have gone to Malaysia for attending a Programme, in which the accused had also participated. Apart from that, so many actors are attending the same programme. After returning from Malaysia, on 15.04.2006, both the deceased and the accused went to ECR Road and on the same day at about 8.30 pm, the deceased returned her home with the injuries on her eyes, nose, face and she was found cry. When the same was questioned by PW 1 and PW 2, the victim Vaishnavi is said to have informed that the accused had compelled her to marry him as a second wife. Further, she told that the accused is said to have stated that if he was not able to get her, she should not live with any other person and so he asked her to go and die or else he is said to have threatened that he would kill her and by stating this, she is said to have beaten by him. PW 2 had given first aid and took her to the Nursing home on the next day and after taking treatment, they have proposed to give complaint to the police. But the deceased had resisted the PW 1 and PW 2 by stating that if complaint is lodged against the accused, her future will be spoiled. In the said circumstances, no complaint has been lodged before the police.

3) In the mean time, on 17.04.2006 at about 11.00 to 11.30 am, while PW 1 had gone to his office, PW 2 had gone to PW 2's mother house, the deceased was alone in their house. On the same day, at about 2.30 pm, another one daughter called the PW 2 through the telephone and informed that Vaishnavi is found hanging. So, both the PW 1 and PW 2 rushed to their house and taken the said Vaishnavi to Sundaram Medical Foundation Hospital. In the Hospital, the Doctor had declared as she is dead. Immediately, on the same day at about 4.00 pm, PW 1 lodged complaint before the K4 Anna Nagar Police Station under Ex.P.1. On receipt of the complaint, the case has been registered in Cr.No.422 of 2006 under Section 174 Cr.P.C. Ex.P.14 is the printed First Information Report. After the registration of the case, PW 16, the then Inspector of Police, K 4 Police station

despatched the First Information Report to the Magistrate concerned. After sending the First Information Report, he took up the case for investigation, he visited the scene of occurrence and prepared inquest report under Ex.P.19. Further, in the presence of the witnesses, he prepared an Observation Mahazar under Ex.P.3. Further, he drawn a Rough Sketch under Ex.P.5, in the presence of the same witnesses, he recovered 2 pieces of white tupata, the broken lock (M.O.4) and iron rod (M.O.3) under the cover of Mahazar Ex.P.4. He examined the witnesses and recorded the statements. Further, he altered the Sections of Law from 174 Cr.P.C to 306 IPC and forwarded the alteration report to the Court. The Alteration Report is Ex.P.6. On 19.04.2006 at about 10.00 am, he arrested the accused and recorded the confession statement given by him.

4) In continuance of investigation, he sent a letter to Airtel cellphone company under Ex.P.7, in which he requested the call details pertaining to the mobile phone used by the deceased. In the meantime, after receiving the requisition letter given by Investigation Officer, PW 13 Dr. Ahamed conducted autopsy over the dead body of the Vaishnavi and found the following injuries.

- Black eye (Bluish contusion) seen around the left eye
- Brownish abrasions seen over left cheek 1 x 0.5 cm near canthus (left) eye 1 x 1cm, Nose 1 x 0.5 cm
- A broad, brown colour antemortem ligature abrasion measuring 25 x 3 cm seen over the front and sides of the neck. On the front the ligature abrasion is above the thyroid cartilage. On right side 4 cms below the mastoid process 9 cm below the left mastoid process and 6 cms below the chin.
- O/D no extravasation of blood in the soft tissue of the neck. Thyroid cartilage and hyoid bone are intact. Finger nails are deeply cyanosed.

According to him, the deceased would have died of ASPHYXIA DUE TO HANGING. PW 13 issued Post Mortem Report under Ex.P.13.

5) On 18.04.2006, PW1 and PW 2 went to the police station and handed over the 2 mobile phones, which were used by the deceased. PW 16 recovered the said mobile phones and handed over the same before the Magistrate Court. After recovering the mobile phones, PW 16 examined the Doctor and recorded the statements. Finally, after completing the investigation on 09.06.2006, he filed a Final Report against the accused under Section 323, 306 and 506(ii) IPC.

6) Based on the above materials, the trial Court framed the charges against the accused and he denied the same. In order to prove the case on the side of the prosecution, as many as 16 witnesses were examined as PW 1 to PW 16 and 19

documents were marked as Ex.P.1 to Ex.P.19. Besides 4 Material Objects.

7) Out of the said witnesses, PW 1 Thanigavelan is the father of the deceased has stated in his evidence that prior to the occurrence, both the deceased and the accused are the artists in TV Serials. On 15.04.2006. at about 8.30 pm, the deceased was returned to her house with the injuries on her eyes, nose and cheek. He has further stated that while asking about the injuries sustained by her, she had stated that the present accused take her to ECR Road and compelled to marry him as a 2nd wife. Since, the deceased is refused to marry the accused, he assaulted her and due to which, she sustained the said injuries. He had further deposed that after giving necessary treatment to his injured daughter (deceased Vaishnavi), he propose to give complaint against the accused. But her daughter (deceased Vaishnavi) resisted him to give complaint by saying that, if complaint has been lodged as against the accused, her future will be spoiled. He further stated that on 17.04.2006, when he went to his office, he received a phone call through PW 2 stating that her daughter Vaishnavi committed suicide in his house. Thereafter, he lodged the complaint against the accused before the police.

8) PW 2 Ranjana who is the mother of the deceased has stated in her evidence in support of the evidence given by PW 1. PW 3 Veeramuthu, who is the driver of the deceased has stated that prior to the occurrence, he saw the deceased in a shooting spot. According to him, on 15.04.2006, after finishing the shooting work, the deceased returned to Mylapore and went along with the accused. Subsequently, on the same day, at about 7.30 pm, the deceased returned with the injuries, when PW 3 asked about the injureis, she stated that she had fallen from the Motor bike. Subsequent to that, he was treated as a hostile witness and not supported the case of the prosecution.

9) PW 4 is the Security, working in an Apartment, in which the deceased and her family are residing. He has stated that on 17.04.2006, at about 12.15 pm, the deceased asked about her driver, further he stated that she told to him that she is going to take rest and requested him to inform the same to her driver for not to disturb her. PW 5 is the independent witness has stated about the preparation of Observation Mahazar and Rough Sketch and the details about the recovery of material objects.

10) PW 6 Jayakumar has stated that when he was working as Assistant Executive in Bharati Airtel Limited, PW 16 enquired him about the call details pertaining to the Mobile Phone Numbers 9840402747 and 9840839540. Further, he depose that he

handed over the call details pertaining to the said mobile numbers.

11) PW 7 is the co-artist, working along with the deceased as well as with the accused. He has stated in his evidence that prior to the occurrence, the deceased and the accused are fall in love with each other and they have decided to perform the marriage. Further he has stated that prior to 2 days from the date of occurrence, the deceased called him through the mobile phone and requested for coming over to ECR Road. When he asked about the necessity for going to ECR Road, the deceased told to him that her parents refused for marrying the accused. Thereafter, she attempted to commit the suicide and the same was blocked by the accused. Subsequent to that, the learned Additional Public Prosecutor treated the said witness as a hostile witness.

12) PW 8 is also the co-artist stated about the love affair of the deceased with the accused. PW 9 Mathi and PW 10 Brinthadas are not supported the case of the prosecution. So both of them treated as hostile witnesses. Further, the entire evidence given by them is not in support of prosecution case. PW 11 Dr. Mohammed Iqbal, attached with Neelangarai Shanti Hospital has stated that on 15.04.2006 at about 7.30pm, the accused came to the Hospital for the injuries sustained. Further, he has stated that when he asked about the details of injuries, he has stated that the same was the self inflicted injury. Further, he has stated that he gave treatment to him and issued Ex.P.10 Medical Bill.

13) PW 12 Dr. Usha has stated in her evidence about the treatment given to the deceased. PW 13 Dr. Tausif Ahamed stated in his evidence that on 17.04.2006 at about 3.10 hours, the deceased was brought to his hospital for treatment. Further, he stated that she already dead.

14) PW 14 Muthurajan is the then head constable, Ambattur Police station has stated that after completing the inquest he entrusted the dead body for postmortem. PW 15 Dr. C. Manohar has stated about the process of Post mortem conducted over the dead body of Vaishnavi. PW 16 Arumugam, the then Inspector of Police, K 4 Police station has stated about the receiving of complaint from PW 1 and about the registration of the case and about the details of investigation and about the filing of Final Report.

15) The learned trial Judge, with reference to the incriminating evidence adduced by the prosecution, questioned the accused under section 313 Cr.P.C and for which, he pleaded not guilty. After recording the same on the side of the accused,

one Beenasharma, who is the first wife of the accused was examined as D.W.1. She has stated that prior to the occurrence, both the accused and the deceased fell in love with each other and the said fact is not known to the parents of the deceased. Further, she has stated that since she is not having the child, she gave consent to her husband for the marriage with the deceased.

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

17) I have heard Mr. P. Kumaresan, learned Counsel for the appellant, Mr. G. Ramar, learned Government Advocate (Criminal Side) for the respondent and perused the records carefully.

18) The learned Counsel for the appellant would content that there are lot of contradictions in the evidence of PW 1 to PW 16. The prosecution has not properly investigated the case and falsely implicated the accused in this case. He would further contend that prior to the occurrence, the deceased and the accused had fall in love with each other. Since the parents of the deceased refused to give consent for their marriage without any inducement, the deceased voluntarily committed suicide. The witnesses examined on the side of the prosecution proves the said fact. The trial Court without considering the said aspects convicted the appellant. Hence, the sentence imposed upon the appellant by the trial Court needs interference.

19) Per contra, the learned Additional Public Prosecutor would contend that PW 1 to PW 2 are clearly stated about the assault made by the accused, as well as threat made on the deceased. Further, he submits that based on the evidence, the trial Court has rightly convicted the appellant under Section 323, 306 IPC. Therefore, there is no need for interference with the conviction and sentence passed by the trial Court.

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

21) Now, on go through the Judgment rendered by the learned Sessions Judge, it was held due to the compulsion and intolerable pressure given by the accused, the victim had committed suicide on 17.04.2006. Now coming to the evidence let in by the prosecution in the trial Court, the call details given by Aircel Company pertaining to the Mobile No. 8940839540 for the period from 15.04.2006 to the date of death have been marked

as Ex.P.18. But, on the side of the prosecution, the particulars of the ownership in respect to the above mobile number have not been shown that the said number is belongs to the deceased. Further PW 2 has stated in his chief examination that during the course of investigation, on 18.04.2006, he handed over the said mobile phones to the Investigatng Officer saying that those mobile phones are used by the deceased. Further she has stated that the said mobile phones are recovered by the Investigating Officer through the Mahazar. In fact, on go through the entire records, the said mobile phones now stated by the PW 2 have not been recovered and marked either as Exhibit or as material objects. So without showing the ownership of the said mobile number, we can not come to the conclusion that the call details pertaining to the said mobile phones are the necessary document to accept the guilt of the accused.

22) Even assuming that the victim was using the said mobile phones, the report given by the Aircel company would establish only about the particulars of contact made by the victim with the accused and not about the details of transactions happened between them particularly about the pressure given by the accused. On perusal of call details particulars, it appears that the accused and victim had a talk through the cellphone till 1.24 pm on 17.04.2006. Accordingly, the accused is the last person having talk over to the victim. As already stated, mere talking through the cellphone alone is not sufficient evidence to hold the accused instigate the deceased for committing suicide. Secondly, on culling out the entire evidence given by the prosecution, would disclose and probablsh two sets of evidence in respect to the relationship of victim with the accused. According to the PW 1 and PW 2, the accused compelled the deceased for marrying him as a second wife. Per contra, the evidence given by PW 7 Siraj and PW 8 Sanjeevi, both the accused and the deceased are loved with each other and the deceased is decided to marry with the accused. Even though, both the above two witnesses not supported the case of the prosecution, the evidence given by them before treating as hostile witnesses would establish the above said fact. Further, the said evidence given by PW 7 and PW 8 corroborated through the evidence of DW 1, who is the 1st wife of the accused.

23) Accordingly, in the trial Court, the prosecution failed to prove the nature of relationship had by the deceased with the accused. In the said circumstances, it could be possible, if the evidence given by PW 7 and PW 8 are true one because of the reason that PW 1 and PW 2 refused to give consent to the deceased for the marriage with the accused, that may lead for committing suicide by the deceased.

24) On go through the entire evidence given by PW 1 to

PW 3, before two days from the date of occurrence, the deceased sustained injuries due to the assault made by the accused. But at the same time, according to the evidence of PW 7, the injuries found on the deceased are the self inflicted injuries. In this area also, prosecution let in 2 set of evidences in respect to the injuries sustained by the deceased previous to the occurrence.

25) Apart from that, according to the evidences, PW 3, two days before the date of occurrence at about 12 noon, the accused took the deceased. On the other hand, the Investigating Officer has stated in his cross examination that there is no evidence to show that on 15.04.2006, the accused took the deceased from the shooting spot. In general, in order to prove the offence under section 306 IPC, the following ingredients are necessary

1. that any person commit suicide
2. that such a commission of suicide for abetment
3. that the abetment was made by the accused

Accordingly, the prosecution must necessarily prove the abetment made by the accused, for which the following 3 ingredients are necessary.

1. Instigation to commit the offence
2. Engaging in conspiracy to commit it
3. Intentionally aiding a person to commit it

26) Now, coming to the case in our hand, in the trial Court, the prosecution has not lead any direct evidence to prove their case. Only based on the circumstantial evidences, the prosecution attempted to prove their case. But in respect to the circumstances, two sets of evidences were let in by the prosecution. As already discussed, both the circumstances may lead the deceased for committing suicide. But the trial Court without considering the said aspect, convicted the accused based on the probabilities. Usually, for deciding the criminal case, the prosecution must prove its case beyond all reasonable doubts.

27) In this case, non production of mobile phones used by the accused as well as the deceased, non proving the nature of relationship between the accused and the deceased, non-establishing of coercion made by the accused creates a doubt whether the accused instigating the deceased for committing suicide or the deceased herself voluntarily committed suicide. The above questions are not answered by the prosecution in the trial Court.

28) Thus the prosecution evidence does not goes to establish the charges framed against the accused. What remains is suspicion and surmises. Those factors may not take place of legal proof. Punishing the accused without any legal and acceptable evidence is not justifiable one. Accordingly, this Court came to the conclusion that the Judgment rendered by the trial Court needs interference.

29) Accordingly, the appeal is allowed, the conviction and

sentence imposed upon the appellant by the learned Sessions Judge, Mahalir Neethimandram, Chennai in SC No.19 of 2007 dated 29.10.2011 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(CS-V)

//True copy//

Sub Assistant Registrar

vrn

To

1. The Sessions Judge, Mahalir Neethimandram, Chennai
 2. The Inspector of Police
K 4 Anna Nagar Police Station, Chennai
 3. The Additional Public Prosecutor
High Court, Madras
 4. The Section Officer, V.R. Section
Madras High Court, Chennai.
 5. The Metropolitan Magistrate, No.V, Egmore, Chennai.
 6. The Chief Metropolitan Magistrate, Egmore, Chennai.
 7. The Superintendent, (Central Prison, Puzhal, Chennai.
- +1cc to Mr.P.Kumaresan, Advocate SR.No.61581

Criminal Appeal No.694 of 2011

GMV (25/09/2018)

WEB COPY