

Bail Slip

The Appellants/Accused viz., Murugan @ Murugavelu, S/o.Velu and Chenrayan, S/o.Marthan were directed to be released on bail as per order dated 03.02.2011 in CRL MP No.1 of 2011 in CRL A No.73 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.73 of 2011
and
M.P.No.1 of 2011

1.Murugan @ Murugavelu

2.Chenrayan

... Appellants/Accused

Vs

State Rep. by
The Inspector of Police,
Krishnapuram Police Station,
Papparapatti Taluk,
Dharmapuri District.
(Crime No.221/06)

.. Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records pertaining to the impugned Judgment rendered by the Additional Sessions Judge (Fast Track Court) Dharmapuri in S.C.No.44 of 2010, dated 08.12.2010 and set aside the same and acquit the appellants from all the charges.

For Appellants : Mr.R.Thirugnanam
for Mr.C.H.Pandian

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is preferred by the appellants /accused against the impugned judgment rendered by the Additional

Sessions Judge (Fast Track Court) Dharmapuri, wherein the learned trial Court sentenced appellant/accused A1 to undergo 6 months of rigorous imprisonment and to pay fine of Rs.500/- for the offence under section 4 of Dowry Prohibition Act. Further the appellant A1 was found guilty under section 498(A) of IPC and sentenced to undergo 3 years rigorous imprisonment and to pay fine of Rs.100/- furthermore he was found guilty under section 304(B) of IPC and sentenced to undergo 7 years rigorous imprisonment and to pay fine of Rs.500/- and A2 was found guilty under section 306 of IPC and sentenced to undergo 5 years rigorous imprisonment and to pay fine of Rs.500/-.

2. Brief case of the appellants/accused:

The prosecution case is that PW1 Murugappan, V.A.O. received the information that one Janaki daughter of Krishnan, Unniampatti village committed suicide by consuming oleander seeds on 22.9.2006. PW1 preferred the complaint to PW9 the S.I. of Police, Krishnapuram Police Station and the FIR in Crime Number 221 of 2006 was registered on the basis of his complaint Exhibit P1 under section 174 of Cr.P.C. and the FIR copies were forwarded to the R.D.O. and higher officials. PW8, R.D.O. conducted inquest on the body of the deceased Janaki before the panchayatars and examined witnesses. His inquest report is Exhibit P6. PW8 recommended the police investigation through Exhibit P7. PW10, Deputy Superintendent of Police Dharmapuri took over the investigation on 22.09.2006 and inspected the scene of occurrence and preferred observation mahazar and rough sketch under Exhibits P2 and P9. He then arrested the accused and alter the sections under 498(A), 304(B) 376, 375 r/w 511 and 306 of IPC the alter report is Ex.P.10. Then the Deputy Superintendent took the investigation examined the Autopsy Doctor and after completing the investigation laid charge sheet.

3. The learned trial Court framed charges against the appellant/accused under section 4 of Dowry Prohibition act, 498 (A) and 304(B) of IPC. To prove the above charges the prosecution examined as many as 1 to 10 witnesses and Exhibits P1 to P10 were marked. PW1 is the V.A.O. examined for preferring the complaint regarding suspicious death. PW2 Alamelu examined as sister of the deceased Janaki, PW3 Krishnan examined as the father of the deceased. PW 4 Lakshmanan Panchayat President examined to bring the deceased to the bus stop. PW 5 Ramajayam examined regarding the marriage between the Prakash and deceased. PW 6 Periyasamy examined as observation mahazar witness. PW7 Dr.K.Sankar examined as Autopsy doctor, PW8 Karuppasamy R.D.O. examined for conducting inquest on the body of the deceased. PW9 Alagurani Sub-Inspector of Police examined for registering the case. PW10 Mahendran examined as

Investigating Officer.

4. On the completion of the trial, the learned trial Court convicted the appellants/accused. Aggrieved over the judgment, the appellants filed this criminal appeal.

5. The learned counsel for the appellants/accused submits that the Court below failed to appreciate that the evidence of PW2 sister of the deceased, PW10 the Investigating Officer. According to them, the deceased Janaki is already married to one Prakasam and also having child through him. In the circumstances the alleged marriage of deceased Janaki, A1 is not sustainable in law and she cannot be treated as the wife of A1.

6. The learned counsel for the appellants/accused submits that the Court failed to note that there is no evidence at all to the effect that A1 tortured his wife demanding dowry except the evidence of the interested witness PW2 who is the own sister of the deceased.

7. The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the trial Court and sought for dismissal of the appeal.

8. I have given my careful consideration to the respective submission made by the learned counsel for the parties.

9. In this case, PWs 2 to 5 were related each other and their evidence has to be cautiously approached. PW2, Alamelu, sister of the deceased Janaki deposed that the deceased was first married to one Prakash and they were separated due to the misunderstandings. Subsequently A2 conducted the marriage to her sister with A1. Even in the second marriage also, both A1 and deceased often quarreled each other and they were living separately in Bangalore. The case of the prosecution against A2 is that he gave sexual harassment to the deceased in the absence of A1 and assaulted her and sent to Unniampatti village. So the deceased consumed Oleander seeds due to the sexual harassment and threat of A1.

10. PW3 Krishnan is the father of the deceased and his evidence is nothing but hearsay.

11.PW4 Lakshmanan, the panchayat president deposed that the deceased was married first to one Prakash and then with A1. Both of them were residing out of their village and on 21.09.2006, it was told by the villagers that Janaki consumed poison, so he brought the deceased by his motor cycle to bus stop and subsequently heard the death of the deceased.

12.PW5 Ramajeyam doing scrap business at Bangalore and deposed before the trial Court that he knew both the deceased and accused and the marriage between the deceased and Prakash and their quarrel. He also deposed that the deceased went to her parental home due to quarrel.

13.PW7 doctor deposed that on 23.9.2006 at the request of R.D.O. Dharmapuri under Exhibit P3, he conducted autopsy on body of the deceased and opined that the deceased died due to consuming Oleander seeds through his report Exhibit P5.

14.In the case on hand, the above depositions pointed the living of the deceased with the A1 and the quarrels between them and nothing more than that.

15.In this case PW2 Alamelu deposed that the marriage between A1 and deceased was took place at Bangalaoire itself. But she could not specify the date on which the marriage was held. Except these vague statements, no witness pointed out the performance of marriage with the A1, matrimonial life with A1 in Bangalore and sexual harassment given by A2. This Court cannot appreciate the evidence of PWs 4 and 5 since they have also not substantiated the case of the prosecution except admitting their familiarity with the accused and the deceased.

16.The charges leveled against A1 and A2 were also not proved beyond reasonable doubt and the evidences adduced do not form a complete chain. Further there is no proof regarding the relationship between A1 and A2 and the consummation of marriage with the deceased. Therefore the prosecution failed to prove that the deceased Janaki died due to dowry demand and cruelty.

17.PW8 Karuppasamy, Revenue Divisional Officer, deposed that the witnesses examined by him alleged that the deceased Janaki was harassed by the appellants by way of demanding dowry and assaulting her. But to substantiate this evidence, no witness pointed out the specific instances happened between the deceased

and the accused A1 and A2.

18.As to what would be reasonable doubt has been laconically laid down in the case of K.Gopal Reddy v. State of A.P., reported in (1979) 1 SCC 355, wherein the Hon'ble Supreme Court had held that it stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused appellant to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused appellant must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other; it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reason."

19.In the result:

a) This Criminal Appeal is allowed and thereby the conviction and sentence imposed on the appellants in S.C.No.44 of 2010, dated 08.12.2010, on the file of the learned Additional Sessions Judge (Fast Track Court) Dharmapuri, is set aside;

b) The appellants/accused A1 and A2 are acquitted from all the charges and the fine amount, if any paid by the appellants/accused shall be refunded by the trial Court;

c) The bail bond if any executed by the appellants/accused are stand cancelled. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The Additional Sessions Judge
(Fast Track Court), Dharmapuri.
2. The Judicial Magistrate No.II,
Dharmapuri.
3. Do through The Chief Judicial Magistrate,
Dharmapuri District (for information)
4. The Superintendent, Central Prison, Vellore.
5. The Inspector of Police,
Krishnapuram Police Station,
Papparapatti Taluk, Dharmapuri District.
6. The Public Prosecutor,
High Court, Madras.

Copy To: The Section Officer,
Criminal Section,
High Court, Madras. (2 copies)

+1 cc to Mr.C.H.Pandian, Advocate Sr.No.22257

Criminal Appeal No.73 of 2011
and
M.P.No.1 of 2011

CSL/19.02.2019

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