

Bail Slip

The Appellants/Petitioners namely 1.Ramalingam S/o Subburaya Chettiar 2.Thanikachalam S/o Jeganmohan 3.Rajendiran D/o Chinnasamy 4.Rajendiran S/o Rajamani 5.Asaithambi S/o Vadivel were released on bail dated 02.12.2011 made in M.P. 1/2011 in CrI.A. No. 776/2011 as directed this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CrI.A.No.776 of 2011

1.Ramalingam

2.Thanikachalam

3.Rajendiran

4.Rajendiran

5.Asaithambi

.. Appellants/Accused 1 to 5

Vs.

The State of Tamilnadu

Rep.by The Inspector of Police,

Neyveli Town Police Station,

Neyveli,

Cuddalore District.

(Crime No.103/2009)

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside order dated 29.11.2011 passed in S.C.No.193 of 2010 on the file of the Additional District and Sessions Court (Fast Track Court No.3), Virudhachalam and acquit the appellants.

For Appellant : Mr.R.Vivekananthan
for Mr.T.Sathyaseelan for A1 to A3
Mr.P.Mani for A4 & A5

For Respondent: Mr.T.P.Savitha
Government Advocate

J U D G M E N T

The appellants herein are arrayed as A1 to A5 in S.C.No.193/2010 on the file of Additional District and Sessions Court (FTC No.3) Virudhachalam. They stood charge for the offence under Section 306 IPC.

2. All the accused denied the charges and opted for trial. Therefore, they were put on trial on the charge. After full fledged trial, the learned Additional Sessions Judge found them guilty of offence under Section 306 IPC. All the accused were accordingly convicted and sentenced to undergo 7 years R.I with a fine of Rs.10,000/- each in default to undergo 1 year R.I. Challenging the conviction and sentence all the accused are before this Court with the criminal appeal.

3. From the materials available on record, the case of the prosecution is as follows:-

i) The deceased Sellapandian was working as a staff in N.L.C., Neyveli. P.W.1 Grassy Sheeba Elizabeth, is his wife, prior to the occurrence, the deceased availed a loan from the appellant and did not repay the same.

ii) On 06.03.2009, at about 9.am., when the deceased was in his house, the appellants came and abused the deceased in filthy language. Subsequently, due to the abuse made by the appellants, the deceased felt ashamed and consequently on the same day night hours, using the saree he committed suicide by hanging.

iii) Thereafter, on the same day, P.W.1 lodged a complaint before (P.W.10) the Sub-Inspector of Police, Neyveli Town Police Station under E.X.P1. After receiving the complaint, a case has been registered in Crime No.103/2009 under Section 174 Cr.P.C., Ex.P7 is the First Information Report. After registration of the case, P.W.10 went to the scene of occurrence and examined the witnesses and panchayathar. Further, he completed the enquiry and prepared the inquest report between 12.30 and 13.30 hours under Ex.P8. Thereafter, he made arrangements for sending the dead body to the Panroti Government Hospital with requisition for conducting autopsy. P.W.8 Dr.Vanitha, when she was working as Assistant Surgeon in Panroti Government Hospital, received a requisition letter sent by P.W.10. During the time of autopsy, she found the following injuries:-

External Injuries:- Ligature mark - starting below side of ear running obliquely in front of the neck above the thyroid cartilage and ends below the nape of neck.

Internal Examination:- No fracture ribs, heart congested, chambers filled with blood, lungs congested hyoid bone intact.

v) After completing the post-mortem, as per the requisition given by the investigating officer, P.W.8 preserved the viscera for chemical analysis, after receiving viscera, P.W.9 Vasuki, when she was working as Deputy Director in Forensic Science, Tiruvarur District examined the above and issued a report that there was no poisonous substances or alcohol found in the body of the deceased.

vi) After receiving the said viscera report, P.W.8 gave opinion that the deceased would appear to have died of Asphyxia due to hanging. The post-mortem report is marked as Ex.P4.

vii) After preparation of inquest report, P.W.10 went to the scene of occurrence and prepared a observation mahazar and rough sketch in the presence of P.W.6 and one Balachandar. The said documents are Ex.P2 and 9 respectively. Subsequent to the examination of witnesses, he altered the Section of law as 306 IPC and sent the report to the Court under Ex.P10. Thereafter, he handed over the case records to P.W.11 for further investigation. After receiving the case records, P.W.11 the then Inspector of Police, Neyveli Police Station examined the doctor who declared the death of the deceased and recorded the statement. Further, he examined the doctor who conducted the autopsy.

viii) Since he was transferred from the said post, the investigation has been completed by P.W.12. He examined the witnesses already examined by P.W.10 and after receiving the chemical examination report he completed the investigation and laid a final report.

ix) Based on the above materials, the trial Court framed charges under Section 306 IPC, all of them denied and wanted trial. Therefore, all the accused were put on trial. During the trial, the prosecution in order to prove the charges against the accused examined as many as 12 witnesses and

exhibited 10 documents.

x) Out of the said witnesses, P.W.1 is the wife of deceased stated in his evidence as on 06.03.2009 at about 9.00 am, when she was present in 5th Block along with the husband's mother-in-law and relatives, all the appellants came there and demanded her husband to repay the loan amount. Further, they abused the deceased as to go and die. Further, they made a life threat and consequently, next day her husband committed suicide.

xi) P.W.2 is alleged to be occurrence witness not stated anything in support of the prosecution. According to P.W.3 he heard the news through his neighbours. P.W.5 is the daughter of the deceased deposed that the said incident was told to her by P.W.1. P.W.6 is a witness attested in the observation mahazar prepared by the investigation officer.

xii) P.W.7 is a Doctor stated in her evidence, on 07.03.2009 at about 6.15 hours, the deceased was brought to the hospital and after seeing him, he declared as brought dead. P.W.8 is also a Doctor stated in his evidence about the injury found on the dead body Chellapandian, he specifically stated about the sending of viscera for chemical examination and gave opinion.

xiii) P.W.9 is the chemical examiner examined the viscera and issued chemical examination report stating that no poisonous substance found in the viscera. P.W.10 to P.W.12 are the police officers stated in the evidence about the manner of investigation and with regard to the filing of final report.

xiv) When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, he neither chose to examine any witness nor did he marked any document.

xv) Having considered the above, the learned Additional Sessions Judge found the accused guilty of abetting suicide. Accordingly, all the accused were convicted under Section 306 IPC and sentenced as indicated in the first paragraph of this judgment. Aggrieved by this conviction and sentence the accused has come up with the present appeal.

4. Today I have heard the arguments of the learned counsel appearing for the appellants and learned Government Advocate appearing for the respondent.

5. The first contention raised by the learned counsel for the appellant is that except P.W.1, the other witness examined on the side of prosecution has not supported the case of prosecution. Further, he made submission that demanding, to repay the loan amount is not an offence. Thereby, he prayed to allow the appeal.

6. In this case, on the side of the prosecution, the wife of the deceased was examined as P.W.1. In the complaint (Ex.P.1), she alleged that a day before the date of occurrence, her husband after consuming the liquor, in intoxicated mood told to her about the particulars of loan availed from the accused. Except that nothing had been averred in the complaint against the appellants. Subsequently, during the time of giving evidence before the trial Court, she deposed that as, a day before the date of occurrence, the appellants all came to her house and humiliating her husband by saying the abusive words in respect to the repayment of loan amount. Accordingly, all the appellants/accused are implicated in this case as per the statement given by P.W.1 before the investigating officer. Now, based on the said statements, she gave evidence against the appellants that they are responsible for her husband's death.

7. So, the non-inclusion of the accused name in the complaint by P.W.1 creates doubt, whether the appellants have entered into her house and abusing the deceased or not. However, the said lapses alone not a sufficient ground to hold that the case of prosecution is entirely false one.

8. In the trial Court, on the side of the prosecution, the neighbours of P.W.1 were examined as P.Ws.2 and 4. In their evidence, they have not stated anything about the incident now alleged by P.W.1. Only P.W.5., who is the daughter of P.W.1., deposed in her evidence that P.W.1 told about the occurrence that too after her father's death.

9. So, in order to believe the case of prosecution, the evidence of P.W.1 alone is available on the side of prosecution. In this case, it is an admitted fact that prior to the occurrence the deceased availed loan from the appellants, further, that the deceased himself committed suicide.

10. In the said circumstances, it is necessary to decide whether the appellants have abets the commission of a crime.

11. Reliance is placed in the judgment rendered in Paramjeethsingh Chawala v. State of Madhya Pradesh in Cr.R.No.315 of 2007 CRL.L.J.3343 wherein it was held as follows:-

"16. . . . on perusal of the totality of evidence on record the only fact appears that the applicant/accused was demanding the loan amount from the deceased and due to which the deceased has committed suicide by consuming some poisonous substance and thus the only demand of the loan amount does not itself prove the fact of instigation to the deceased for commission of the suicide. Therefore, on the basis of that the applicant/accused cannot be charged for the offence punishable under Section 306 of the IPC."

12. Further in order to prove the offence under Section 306 IPC, the essential ingredients are

- i) that any person committed suicide and
- ii) that such a commission of a suicide by a consequence of an abetment
- iii) that the abetment was made by the accused.

13. Moreover, to bring home a charge under Section 306 IPC the prosecution is to prove that the victim of offence committed suicide and the accused abetted the commission of the said offence. Such abetment being one under Section 107 IPC. Now, on going through the Section 107 IPC, reads as follows:-

107. Abetment of a thing -

A person abets the doing of a thing, who-

First- Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

14. Now, in the case on hand, during the time of occurrence, the appellants demanded the deceased to repay the loan amount availed already by the deceased from appellants. So the intention of the appellants at that time is only to get back the loan amount not otherwise.

15. In this aspect, our Hon'ble Apex Court in criminal appeal No.1589 of 2012 made a observation as follows:-

10. In Sanju @ Sanjay Singh Sengar v. State of M.P., AIR 2002 SC 1998, a quarrel had taken place between the accused and the deceased during which, the accused asked the deceased "to go and die". A chargesheet was filed against the accused under Section 306 r/w Section 107 IPC when the said person actually committed suicide. This Court dealt with the issue elaborately, taking into consideration the fact that the accused had also specifically been named in the suicide note left behind by the deceased, and held that merely asking a person "to go and die" does not in itself amount to instigation and also does not reflect mens rea, which is a necessary concomitant of instigation. The deceased was anyway in great distress and depression. The other evidence on record showed him to be a frustrated man who was in the habit of drinking. Thus, considering the said circumstances, this Court quashed the proceedings against the accused, holding that ingredients of abetment were not fulfilled therein.

16. According to the observation of our Hon'ble Apex Court demanding to repay the loan amount does not constitute the offence of abetment to commit suicide.

17. Therefore, even assuming the appellants have abusing the deceased for non repayment of loan, it does not constitute the thing of abetment.

18. In this aspect, the trial Court had committed the grave error in coming to the conclusion that the appellants are responsible for the death of P.W.1's husband. So, the said finding needs interference. Accordingly, this Court holds that the act committed by the appellants does not come under the purview of the abetment.

19. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant in S.C.No.193 of 2010 dated 29.11.2011 by the Additional District and Sessions Court (Fast Track Court No.3), Virudhachalam is set

aside and the appellants/accused are acquitted of the charges. The bail bond, if any, executed by the appellants/accused shall stand cancelled. The fine amount, if any, paid by appellants/accused shall be refunded to them.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
Neyveli Town Police Station,
Neyveli,
Cuddalore District.
2. The Additional District and Sessions Court (FTC. No.3),
Virudhachalam
3. The District Munsif cum Judicial Magistrate, Neyveli.
4. Thro The Chief Judicial Magistrate, Cuddalore,.
5. The Superintendent
Central Prison, Cuddalore.
6. The District Collector
Cuddalore.
7. The Superintendent of Police, Cuddalore.
8. The Director General of police
Mylapore, Chennai 4.
9. The Public Prosecutor
High Court, Madras 104.
10. The Section officer
Criminal Section, High Court, Madras.

+5 Ccs to Mr.T. Sathyaseelan, Advocate sr 42380.

+1 CC to Mr.P. Mani, Advocate sr 42413

Cr1.A.No.776 of 2011

GMR (CO)
SP(09/08/2018)