

Bail Slip

The Appellant/1st Accused namely R. Dhuraisamy, aged 45 years S/o. Rengana Gounder, was enlarged on bail vide order dated 19.12.2011, made in MP.No.1 of 2011 in Crl.A.No.780 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.780 of 2011

R.Dhuraisamy ... Appellant/1st Accused

Vs.

State rep by Inspector of Police,
Perur Police Station,
Coimbatore District,
Crime No.307 of 2009. Respondent/Complainant

PRAYER:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment dated 29.11.2011 made in S.C.No.240 of 2011 passed by the learned Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore by convicting and sentencing the appellant to undergo 5 years R.I. and to pay a fine of Rs.2,000/- I/d to undergo 6 months R.I for the offence U/s.306 of IPC.

For Appellant : Mr.S.Ashok Kumar (SC) for
Mr.A.Amarnath

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

J U D G M E N T

This Criminal Appeal has been filed against the Judgment rendered by the Additional District and Sessions Judge (FTC No.I) in S.C.No.240 of 2011 dated 29.11.2011.

2. In the above said case, the appellant was arrayed as first accused. At the end of the trial, he was convicted and sentenced to undergo the punishment of five years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo 6 months rigorous imprisonment for the offence under Section 306 of IPC.

3. The gist of the case of prosecution is as follows:-

P.W.4 Velusamy was residing in Madampatti, the deceased Sivakumar was his friend. On 30.09.2009 at 6 p.m, the deceased called P.W.4 Velusamy through mobile phone and told that he consumed poison. Immediately, P.W.4 asked the deceased that if any other person was present near to him, for which, the deceased replied that the appellant, Krishnan and Marimuthu, who are the accused facing trial in this case, were near to him. After hearing that from the deceased, P.W.4 immediately informed to P.W.1 Shanthi, who is the sister of the deceased Sivakumar.

4. Thereafter, P.W.1 Shanthi lodged a complaint before the Inspector of Police, HC 403, Perur Police Station under Ex.Pl. After receiving the complaint from P.W.1, a case has been registered in Crime No.307 of 2009 for the offence punishable under Section 174 of Cr.P.C. After registration of the case, on the same day, an inquest report was prepared by the Sub-Inspector of Police, Perur, further he recorded the statement from the witnesses and Panchayatar. After completing the inquest report, the dead body was sent to the Government Medical College and Hospital, Coimbatore, for post mortem.

5. After getting requisition from the police officials, P.W.7 who is the doctor working in the Government Medical College and Hospital, Coimbatore, conducted an autopsy over the dead body. During the time of post mortem, he found out the following details:-

"Body was first seen by the undersigned at 11.45 p.m on 01.10.09. The condition of the body then was rigor mortis present all over the body. Postmortem examination was commenced at 11.45 p.m on 01.10.09. Appearances found at Post mortem :- Moderately nourished body of a male aged about 32 years, finger and toenails were bluish in colour. No evidence of any external or internal injuries noted on the body.

OTHER FINDINGS:-

-Pleural & Peritoneal cavities - empty.
-Heart right side chambers contain few cc of fluid blood. Left side chambers empty - Coronary arteries - patent.
-Hyoid bone - intact.
-Stomach contains about 50 ml of white colour fluid with irritant pungent smell. Mucosa congested.
-Small intestine contains about 20 ml of white colour fluid with irritant pungent smell, Mucosa congested.
-Liver, Lungs, Spleen, Kidneys and Brain - cut section congested.
-Urinary Bladder - empty.
Viscera preserved and sent for chemical analysis."

6. After completion of the post mortem, the internal parts of the deceased were sent to chemical examination. During the time of chemical examination, it was found that the internal parts of the dead body were having poisonous substance. So, the doctor who conducted the autopsy gave final opinion that the death had occurred due to consumption of poison. The post mortem report and the final opinion given by the doctor are marked as Exs.P4 and P5. After completion of the above formalities, on 11.10.2009, P.W.3 who is the mother of the deceased, lodged the second complaint before the same Inspector of Police, alleging that his son died due to the threat made by the appellant and other two accused. After receiving the said complaint under Ex.P2, the section of law was altered as 306 of IPC from 174 of Cr.P.C. Thereafter, an investigation was taken up by the Inspector of Police, he obtained further statement from the witnesses and at the end of the investigation, he laid a charge sheet for the offence punishable under Section 306 of IPC.

7. In the Trial Court, 9 witnesses were examined on the side of the prosecution besides 11 exhibits are marked. After concluding the trial, learned Additional District and Sessions Judge (FTC No.I) came to the conclusion that the appellant was found guilty for the offence punishable under Section 306 of IPC and acquitted other two accused from the charges framed against them. Aggrieved by the conviction and sentence, the appellant challenging the same before this Court by way of this appeal.

8. Today, when the appeal is taken up for hearing, Mr.S.Ashok Kumar, learned senior counsel appearing for the appellant and Ms.T.P.Savitha, learned Government Advocate (Crl.Side) appearing for the respondent, are present and advanced their arguments.

9. The first and foremost contention raised by the learned counsel for the appellant is that in the initial complaint lodged by P.W.1, it is mentioned that the alleged death had happened by voluntarily consuming poison by the deceased. Thereafter, after 10 days, a story was cooked up by the relative of the deceased and lodged another complaint, in which, as a first time, P.W.3 made allegations against the appellant and other two accused. So, the second story submitted by P.W.3 is nothing but an after thought. Thereby, the evidence putforth by the prosecution cannot be having any trustworthy and therefore, the learned counsel appearing for the appellant prayed for allowing the appeal.

10. Now, on considering the arguments advanced by the learned senior counsel for the appellant that immediately after the occurrence, P.W.1 Shanthi who is the sister of the deceased, lodged a compliant to the Inspector of Police. Thereafter, the said compliant has been registered. In the said compliant, she narrated the happenings as the deceased is

having continuous severe stomach pain, due to which, on the day of occurrence, he consumed poison and thereafter, he died in the hospital. Secondly, on going through the Ex.P2, which was a complaint given by P.W.3, it was alleged that on the fateful day, P.Ws.1 to 3 went to the house, where an Omni Van was parked. In the Van, the deceased and the other two accused were present. When the same was questioned, the deceased told to P.Ws.1 and 3 that the present appellant was only responsible for consuming poison. The said evidence was corroborated by P.Ws.1 and 2 and other witnesses examined in the case.

11. So, in earlier, something was hidid particularly, at the time of lodging the complaint before the Inspector of Police. Now, on going through the contents of Ex.P2, it seems that before five months from the date of occurrence, the appellant and other two accused (already acquitted by the Trial Court) went to the house of P.W.3 and demanded to pay a sum of Rs.1,00,000/- which was received by the deceased as a loan. If the said allegation is a true one, the fact remains that the alleged offence in respect of this case had happened after five months from the date on which the appellant and other two accused made demand to the deceased.

12. In the said circumstances, it is necessary to see the Judgement of our Hon'ble High Court of Madras, reported in 2014(2) MWN (Cr.) 410, in which, it was observed in Paragraph No.44 as follows:-

"44. Simple abuses are not sufficient to provoke the victim to commit suicide. It will not attract Section 306, I.P.C. Simply because the lender has demanded repayment of his money, if the debtor commits suicide, the creditor cannot be said to have abetted his committing suicide. Section 306, I.P.C. is not attracted towards him."

13. So, considering the view already taken by this Court, in this case also this Court follows the same view and comes to a conclusion that the demand made by the appellant alone is not an offence constituting Section 306 I.P.C. Secondly, in this case, the inquest report prepared in the earlier stage, was marked as Ex.P8. In the said document, on going through Column No.9, the Panchayatar and witnesses who know the occurrence stated that the deceased consumed poison for the reason that he is having continuous stomach pain. The said information given by the witnesses and panchayatars is in the form of confirming the earlier version (mentioned in Ex.P1).

14. Therefore, there are two set of facts are put forth by the prosecution for proving their case. So, having two set of facts for proving the prosecution is nothing but fatal. Even assuming the alleged death had happened due to the threat made by the appellant and other two accused, it is not an offence for 306 I.P.C as already stated. In this occasion, in

Criminal Appeal No.210 of 2002, dated 15.07.2008, this Court has observed in Paragraph No.11 as follows:-

"11.....The deceased also stated in the suicidal note about the conducting of the chit business wherein she was cheated by several persons and she was also pressurized by her co-workers in the office with regard to the chit and that she was not in a position to pay the interest. She had also stated that she along with her husband and father decided to commit suicide and also to take along with them the deceased Nagarajan, her elder son, who was mentally ill. She had made a further mention about the sum of Rs.25 lakhs due to her by way of conducting chit and since, the subscribers were not repaying the amount, she was in financial difficulties. After narrating the reasons for committing the suicide, at the end of the letter, she had made a note wherein she had mentioned that it was only the appellant/A-1 who made her to come to the quick decision. It is further stated in the note that the appellant/A-1 came along with his parents and brother, who are the other accused in this case and threatened her. She had concluded her letter by saying that she was pressurized for payment of interest and also by the activities of the appellant/accused Rajamani, all the subscribers were demanding money at one and the same time and as she was not able to face everyone she had taken the decision to commit suicide along with her family members."

15. So, according to the view of this Court, even if the name of the accused is found in the suicide note, the mere allegation or otherwise the demand made for repaying the loan is not an offence. I am also having the same view and come to the conclusion that the Trial Court without seeing these aspects, convicted the appellant. So, the Conviction and sentence passed against the appellant is liable to be set aside.

16. In the result, the criminal appeal is allowed. The conviction and sentence passed against the appellant is set aside. Fine amount paid by the appellant should be refunded forthwith.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To

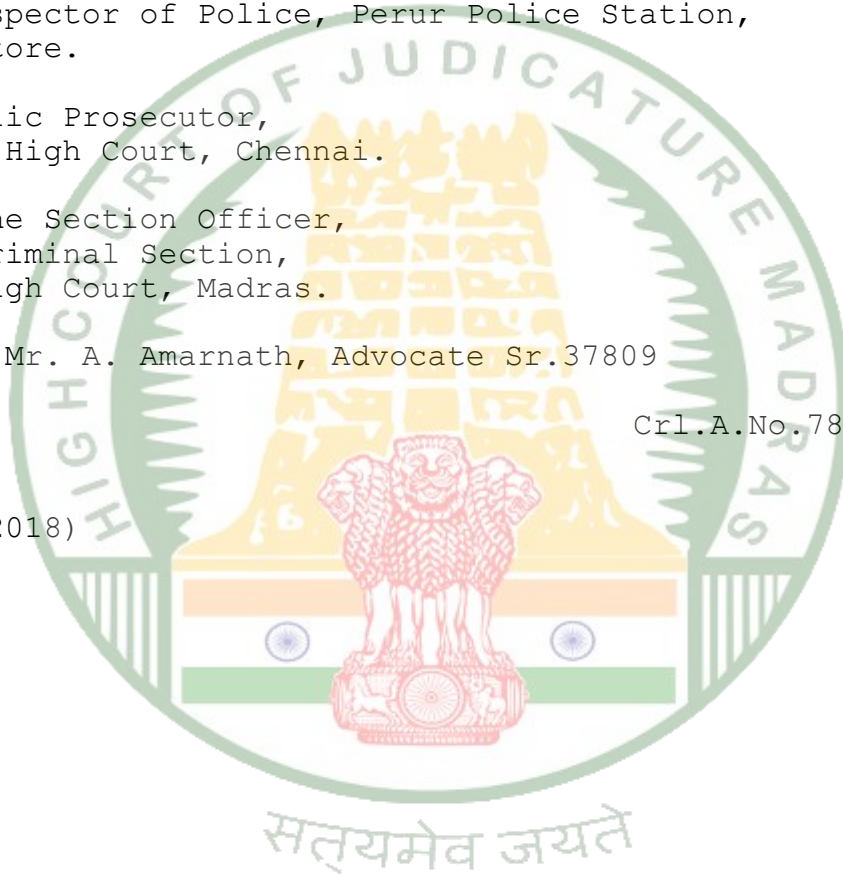
1. The Judicial Magistrate NO.II,m Coimbatore.
2. -do- The Chief Judicial Magistrate Coimbatore.
3. The Additional District and Sessions Judge,
Fast Track No.I, Coimbatore.
4. The Superintendent, Central Prison, Coimbatore.
5. The Inspector of Police, Perur Police Station,
Coimbatore.
- 6.The Public Prosecutor,
Madras High Court, Chennai.

Copy to:The Section Officer,
Criminal Section,
High Court, Madras.

+ 1 cc to Mr. A. Amarnath, Advocate Sr.37809

Crl.A.No.780 of 2011

GJII(CO)
EU(05/07/2018)



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