

Bail Slip

The Sole appellant herein i.e. Kumar, S/o. Manickam (single Accused in S.C.No.271/2006 on the file of the Sessions Judge, Mahila Court, Salem) was released on bail vide order of this court dated 28.03.2008 and made in CrI.M.P.No.1 / 2008 in CrI.A.199/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 29.10.2014

Date of decision: 06.11.2014

CORAM

THE HONOURABLE MR. JUSTICE R.S.RAMANATHAN

CRIMINAL APPEAL No.199 of 2008

Kumar

...Appellant/Single Accused

...vs...

State by Inspector of Police,
Ammapettai Police Station,
Salem District.
Crime No.3422 of 2004

...Respondent/Complainant

Criminal Appeal filed under Section 374 of the Criminal Procedure Code against the judgment dated 3.3.2008 made in SC No.271 of 2006 by the learned Sessions Judge, Mahila Court, Salem.

For Appellant : Mr.S.Doraisamy

For respondent : Mr.A.N.Thambithurai

Additional Public

Prosecutor

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JUDGMENT

The appellant was convicted for an offence under Section 306 IPC and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three months rigorous imprisonment, by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.271 of 2006 dated 03.03.2008. This appeal is filed against the said judgment of conviction and sentence.

2. The case of the prosecution as seen from the charge sheet is that the deceased Tamilarasi was married to one Govindan; she got separated from her husband and she was living at Mariamman

koil Street, Nanjampatti. The appellant moved with her and gave false representation that he would marry her and was having illicit relationship with the deceased Tamlarasl and also received a sum of Rs.15,000/- from her. She also became pregnant due to illicit relationship with the appellant. The appellant asked her to abort the foetus and he also abused and attacked her. Therefore, the deceased committed suicide in her house at 6.00 p.m., on 30.11.2004 by consuming "Sani Powder", a poisonous substance. As the appellant had abetted and induced her to commit suicide and was responsible for her death, the appellant was liable to be prosecuted for offence under Section 306 IPC.

3. The prosecution examined 11 witness and marked 10 Exhibits to prove the guilt of the appellant. PW.1 and PW.4 were the brothers of the deceased. PW.3 was the sister of the deceased. PW.2 was the landlord. PW.6 to 9 are the Doctors. PW.10 is the Sub-Inspector of Police who registered the complaint. PW.11 is the Investigating Officer.

4. The trial Court, on the basis of evidence of PW.1 and PW.4, came to the conclusion that the appellant was having illicit relationship with the deceased and he received a sum of Rs.15,000/- from the deceased and refused to marry and ill-treated the deceased and made her to commit suicide and that was also proved by the evidence of PW.9, the Doctor who gave evidence that the deceased might have consumed some poison and died due to that.

5. Learned counsel for the appellant, Mr. S.Doraisamy, submitted that the specific case of the prosecution is that the deceased consumed "Sani Powder", a poisonous substance, and she was induced to commit suicide by the behaviour of the appellant. He further submitted that the evidence of PW.9, Doctor and the Chemical Analysis Report Ex.P.8 did not support the prosecution case. As per the evidence of PW.6, Doctor, who conducted post-mortem submitted that there is no symptom of poison in the kidney or in the liver of the deceased and if a person consumed any poisonous substance that would be found in the kidney and liver and he did not find any poisonous substance in these parts. He also admitted that the deceased would have died due to food poison or due to heart failure. Ex.P.8 is the Chemical Analysis Report and Chemical Analysis Report also clearly shows that no poison was detected in any one of the parts, namely, stomach, intestine, liver and kidney, which were sent for chemical analysis. PW.9, the Doctor who gave opinion on the basis of Chemical Analysis Report has only stated that he was not in a position to say what kind of poison was consumed by the deceased but the deceased must have consumed some poison. He therefore submitted that when the Doctor who conducted post mortem did not find any poisonous substance in the vital organs of the deceased and the Chemical Analysis Report Ex.P.8 also clearly proved that there was no poisonous substance in Kidney, liver and stomach, which were sent for chemical analysis, the story of the prosecution that the deceased consumed poison and

she died as a result of that, falls to the ground and the evidence of PW.9 that the deceased could have consumed some poison cannot be accepted in the absence of any material evidence to corroborate the same. He, therefore, submitted that the deceased committed suicide by consuming poison was not established by the prosecution. He also submitted that PW.1 and PW.4 were brothers of the deceased and PW.1 admitted in his cross-examination that he was not having cordial relationship with the deceased and he was not aware about the money transaction between the deceased and the appellant and there is no proof that PW.1 gave a sum of Rs.60,000/- to the deceased from and out of the money received from his father's property and out of which, the deceased gave Rs.15,000/- to the appellant. He further submitted that PW.4, another brother of the deceased did not support the prosecution and PW.3 is the sister of the deceased, who also did not support the prosecution. He also submitted that though there are neighbours, none of them was examined to prove that the appellant was having relationship with the deceased and was coming to the house of the deceased. Therefore, in the absence of any evidence by the neighbours that the appellant was coming to the house of the deceased and the deceased consumed poison as a result of abuse and ill-treatment, it cannot be contended that the prosecution has proved its case. These aspects were not properly appreciated by the trial Court.

6. Learned Additional Public Prosecutor submitted that PW.1 and PW.3 have given evidence that the appellant received money and refused to give back the same and the appellant was having illicit relationship with the deceased. PW.9 Doctor also gave evidence that the deceased must have consumed some poison and though the Doctor was not able to identify the nature of poison, having regard to the fact that the deceased consumed poison and the deceased was having illicit relationship with the appellant and she became pregnant through the appellant as evidenced by the evidence of PW.3 and PW.8, the trial Court rightly came to the conclusion that the accused was responsible for the death and abetted her to commit suicide and therefore, there is no need to interfere with the well considered judgment of the trial Court.

7. Heard the learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor appearing for the State and perused materials available on record.

8. Having regard to the submissions of the learned counsel for the appellant and the learned Additional Public Prosecutor and having regard to the evidence let in by the prosecution, we will have to see - (i) whether the deceased committed suicide by consuming poison and (ii) whether the appellant has abetted the deceased to commit suicide.

9. In order to punish a person under Section 306 IPC, the prosecution has to prove that such a person committed suicide and the accused abetted the commission of such suicide. Therefore,

initially, the prosecution has to prove that the deceased committed suicide.

10. In this case, it is the specific case of the prosecution that the deceased consumed poisonous substance, namely, "Sani Powder" and therefore, committed suicide. Admittedly, no witness was examined to prove that the deceased consumed "Sani Powder", a poisonous substance. Even no attempt was made by the prosecution by examining the person who was selling "Sani Powder", a poisonous substance and unfortunately, the Doctors also did not support the case of prosecution. As rightly pointed out by the learned counsel for the appellant, PW.6 is the post-mortem Doctor and he did not find any poisonous substance in liver, kidney and stomach and he also admitted that if a person consumed poison, the poisonous substance would be present in kidney and liver and it will also be disclosed in the viscera report. He also admitted that the deceased might have died due to food poison or heart failure. Ex.P.8 is the viscera report. It clearly shows that stomach, intestine, liver, and kidney were sent for analysis but no poisonous substance was detected. Therefore, in the absence of any proof that the deceased consumed poison and as a result of that, she died, it cannot be contended that the deceased committed suicide and the appellant has abetted the suicide. Though PW.9, Doctor who gave evidence on the basis of Ex.P.8, would depose that the deceased might have consumed some poison, the evidence of PW.9 cannot be accepted having regard to Ex.P.8 Chemical Analysis Report. As per the evidence of PW.6, the deceased might have died due to heart attack or due to food poison. Therefore, having regard to Ex.P.8 and the evidence of PW.6, in my opinion, the prosecution has not proved that the deceased committed suicide by consuming poison. Hence, in the absence of any such proof produced by the prosecution, it cannot be stated that the deceased committed suicide by consuming poison. Therefore, the first point for consideration is answered against the prosecution and I hold that the prosecution failed to prove that the deceased committed suicide by consuming poison.

11. When the deceased had not committed suicide, the next question arises for consideration is whether the appellant can be found guilty for having abetted suicide of the deceased.

12. When there is no evidence adduced by the prosecution that the prosecution committed suicide, the appellant cannot be convicted for abetting the suicide of the deceased.

13. Further, in this case, no evidence was adduced by the prosecution to prove that the accused was responsible for the suicide of the deceased and he abetted the suicide. PW.1 and PW.3 have stated that the deceased was having illicit relationship with the appellant and as a result of that the deceased became pregnant and therefore, the appellant asked her to abort the foetus and that the appellant also illtreated and abused her and received

Rs.15,000/- from her and therefore, the deceased committed suicide.

14. The evidence of PW.1 cannot be believed for the following reason. He admitted that he was not having any cordial relationship with his sister the deceased but he would say that from and out of his father's property, he gave Rs.60,000/- to the deceased and another Rs.60,000/- to PW.3. Even assuming that he gave Rs.60,000/- to the deceased, there was no evidence by the prosecution that the deceased gave Rs.15,000/- or any amount to the appellant. PW.3 has stated that the deceased told her that the appellant received money from her and refused to give back the same and she also informed her that she became pregnant through the appellant. Though the prosecution examined PW.7 and PW.8 to prove that the deceased was pregnant, there was no evidence to prove that the deceased became pregnant through the appellant. Even assuming that the deceased became pregnant through the appellant, as per the evidence of PW.6 post mortem Doctor, at the time of death, the deceased was not found to be pregnant. Therefore, she got herself aborted even earlier. As per the evidence of PW.3, the appellant received some money and refused to give back the same. By reason of the same, one cannot jump to the conclusion that the deceased committed suicide by reason of the refusal on the part of the appellant to give back money.

15. In order to convict a person under Section 306 IPC, the prosecution must prove that the accused had committed some act by which the deceased was forced to commit suicide. In this case, as per the evidence of PW.3, the deceased gave money to the appellant and he refused to give back the money and it has not been stated that the deceased gave money and that the appellant refused to give back the same. Therefore, there is no nexus between the refusal on the part of the appellant and the commission of the suicide by the deceased.

16. As stated supra, when the prosecution failed to prove that the deceased committed suicide, there is no question of charging the appellant for abetting the suicide. These aspects were not properly appreciated by the trial court and the trial court erred in believing the evidence of PW.9 and PW.3 and convicting the appellant. Further, admittedly, there were neighbours but none of them was examined by the prosecution to prove that the appellant was coming to the house of the deceased and they were having some relationship. Therefore, in the absence of any proof that the appellant was visiting the house of the deceased and they were having illicit relationship, it cannot be contended that the appellant abetted the deceased to commit suicide.

17. Therefore, I hold that the prosecution failed to establish that the appellant abetted the deceased to commit suicide. The point No.2 is answered against the prosecution.

18. In the result, the Criminal Appeal is allowed and the impugned judgment of conviction and sentence imposed on the appellant is set aside and the appellant is acquitted of the charge levelled against him. He is set at liberty. The bail bond executed by him shall stand terminated and the fine amount, if any, paid by him shall be refunded to him.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

asvm

To

1. The Sessions Judge,
Mahila Court, Salem.
2. The Judicial Magistrate No.V,
Salem.
3. The Chief Judicial Magistrate,
Salem.
4. Inspector of Police,
Ammapettai Police Station,
Salem District.
Crime No.3422 of 2004
5. The Public Prosecutor,
Madras High Court,
Chennai.
6. The Section Officer,
Criminal Section,
High Court, Madras.

1 CC to Mr.S.Doraisamy, Advocate SR.No. 52832

Criminal Appeal No.199 of 2008

GJ (CO)

PSI (27.11.2014)