

BAIL SLIP

The Appellant CRL A NO.308/2013

Accused Name

- 1)P.Periyasamy s/o Pachiyappan
- 2)P.Kaliyammal w/o.Pachiyappan,

in Sc.NO.57/2011 dt.21/03/2013 on the file of the Principal Sessions Judge,Dharmapuri.

Were directed to be released on bail as per the order of this Hon'ble court dated 19.04.2013 in MP.1/13 in CRL A 308/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.A.No.308 of 2013

1.P.Periyasamy
S/o.Pachiyappan

2.P.Kaliyammal
W/o.Pachiappan

... Appellants

vs

State represented by
The Inspector of Police,
Karimangalam Police Station,
Karimangalam,
Dharmapuri District.
Crime No.911 of 2010

... Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment of learned Principal Sessions Judge, Dharmapuri, passed in S.C.No.57 of 2011 on 21.03.2013.

For Appellants : Mr.C.R.Malarvannan

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

JUDGMENT

This appeal arises against the judgment of learned Principal Sessions Judge, Dharmapuri, passed in S.C.No.57 of 2011 on 21.03.2013.

2. Prosecution case is that petitioners/A1 and A2 are husband and mother-in-law of deceased. As the deceased did not conceive, there arose quarrels between them. First accused assaulted the deceased owing to which she went away to her parental home. Since the first accused refused to take her back, mother of the deceased took her to the matrimonial home on 11.10.2010. On the night of 11.10.2010, deceased spoke to her brother over phone and discussed her problems. On 12.10.2010, PW-2, complainant/father of deceased went to deceased's house and had a discussion with his daughter. Accused then demanded dowry of 100 sovereigns of jewels and cash of Rs.10,00,000/-. While so, on 13.10.2010 at about 07.00 a.m., complainant was informed by PW-4 that the whereabouts of her daughter was not known and only her cell phone was found on the parapet wall of a Well. PW-2 went there and found the body of his daughter in the Well. On the basis of complaint preferred by PW-2, a case was registered in Crime No.911 of 2010 on the file of respondent u/s.174 Cr.P.C. and later, the same was altered to reflect offence u/s.304-B IPC. On completion of investigation, a charge sheet was filed informing commission of offences u/s.498-A, 304-B, 306 IPC and 4(B) of Tamil Nadu Prohibition of Harassment of Woman Act, 1998. On committal, the case was tried in S.C.No.57 of 2011 on the file of learned Principal Sessions Judge, Dharmapuri. Before trial Court, prosecution examined 11 witnesses and marked

20 exhibits and 1 material object. On the side of defence, 6 witnesses were examined and 6 exhibits were marked.

3.1. PW-1, Sub-Collector, Dharmapuri, spoke to receipt of First Information Report in Crime No.911 of 2010 on the file of respondent registered u/s.174 Cr.P.C. on 13.10.2010 and conduct of inquest. PW-1 deposed that on completion of inquest, he came to know that death was not occasioned owing to dowry demand. However, the deceased had suffered hurt at the hands of the accused. Ex.P1 is the inquest report.

3.2. PW-2, father of deceased, spoke in keeping with the prosecution case and preference of Ex.P2, complaint. PW-3, sister of deceased, also spoke on the same lines.

3.3. PW-4, neighbour of deceased, spoke to calling the deceased over phone since she was not present at home, of seeing her cell phone on the parapet wall of the Well and of informing PW-2 about the same. PW-4 also spoke of a cordial relationship between deceased and first accused.

3.4. PW-5, neighbour of deceased, spoke to attesting Ex.P3, observation mahazar and Ex.P4, Seizure Mahazar.

3.5. PW-6, a relative of accused, deposed that he did not know anything about the family issues of the accused and he did not know why deceased died.

3.6. PW-7, Head Constable, Kariamangalam Police Station, spoke to handing over the body of deceased towards conduct of postmortem and on conclusion thereof, handing over the body to his relatives.

3.7. PW-8, Sub-Inspector of Police, Kariamangalam Police Station, spoke to registration of case in Crime No.911 of 2010 on the file of respondent u/s.174 Cr.P.C. and of forwarding Ex.P5, FIR to Revenue Divisional Officer and higher officials for appropriate action.

3.8. PW-9, Doctor, who conducted post-mortem on the body of deceased, has opined that the deceased would appear to have died of asphyxia due to drowning.

3.9. PW-10, Deputy Superintendent of Police, Dharmapuri Circle, who conducted initial investigation in the case, spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses, obtaining various reports and on his transfer, of handing over the case papers to PW-11, Deputy Superintendent of Police, towards further investigation.

3.10. PW-11, Deputy Superintendent of Police, who continued the investigation, spoke to examination of witnesses, forwarding the viscera of deceased for chemical analysis under Exs.P15, 16 and P17 and of obtaining Ex.P18 - Biological report, Ex.P19 - Viscera report and Ex.P20 - Bone case report. PW-11 also deposed that on completion of investigation, he filed a charge sheet informing commission of offences u/s.498-A, 304-B, 306 IPC and 4(B) of Tamil Nadu Prohibition of Harassment of Woman Act, 1998.

3.11. DW.1 to 5, Doctors, spoke to treatment undergone by deceased. DW-6, Counsellor of Kariamangalam Corporation, spoke to cordial relationship between accused and deceased and of first accused informing him of treatment undergone by deceased.

4. On appreciation of materials before it, trial Court, under judgment dated 21.03.2013, while acquitting accused of offence u/s.304-B IPC, convicted them for offence u/s.498-A IPC and sentenced each of them to 2 years R.I. and fine of Rs.2,000/- i/d 3 months R.I. Against such finding, the present appeal has been preferred.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor for respondent.

6. It is not the prosecution case that deceased had committed suicide by jumping into the well. PW-1, RDO, has admitted to his enquiry revealing that A1 and deceased lead a happy congenial matrimonial life. The evidence of PW-4, a neighbour, supports the same. PW-4, neighbour, has spoken to being informed of the deceased having gone missing and thereupon he made a call to her cellphone and proceeded towards the Well. He found the cellphone on the parapet wall of the Well. He called PW-2, father of the deceased whereupon PWs.2 and 3 had come to the scene. Thereafter, the body of the deceased was fished out of the Well. Before PW-1 - Revenue Divisional Officer, A2 - mother-in-law of the deceased, has stated that her son had, on 13.10.2010 at 5.00 a.m., required his wife, the deceased, to switch on the electric motor at the Well which was 250 feet away from the house and proceeded to his field. The statements of the witnesses examined in the inquest have been marked along with the inquest report. Statement of A2, in the circumstances of the case would indicate her innocence and can be looked into. The possibility of deceased having met her death owing to an accidental fall in the Well at a dark hour cannot be ruled out. There is ample evidence of a congenial relationship between the deceased and accused. A perusal of evidence of PW-2, father of the deceased, reveals that much of what he has deposed to against the accused was not stated by him either before PW-1, who conducted inquest or in the course of investigation. PW-6 has spoken to A2 treating fondly her daughter-in-law, the deceased, of a good relationship between A1 and his wife, the deceased and of A1 being an only son and of good means. The benefit of doubt is to be afforded to appellants/accused.

The Criminal Appeal shall stand allowed. The judgment of learned Principal Sessions Judge, Dharmapuri, passed in S.C.No.57 of 2011 on 21.03.2013, shall stand set aside. Appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

To

1. The judicial Magistrate, Palacode.
2. The Chief judicial Magistrate, dharmapuri.
3. The Principal Sessions Judge,
Dharmapuri.
4. The Inspector of Police,
Karimangalam Police Station,
Karimangalam,
Dharmapuri District.
5. the District collector,
Dharmapuri.
6. The Public Prosecutor,
High Court, Madras.
7. The Director General of police,
Mylapore. Chennai 4.

+1cc to Mr.N.MOHADDEEN BASHA , Advocate SR.No. 1548

Cr1.A.No.308 of 2013

ASK(28/09/2018)



WEB COPY