

Bail Slip
CRL.MP.1/2009 in CRL.A.No.401/2009

The Appellant/Accused No.2&3 viz., Elumalai, S/O Chengeani, Male, aged 32 years and Gengammal, W/O Chengeani, Female, aged 53 years were released on bail dt:27/07/2009 in CRL.MP.1/2009 in CRL.A.No.401/2009 on the file of the this Court.

CRL.MP.1/2009 in CRL.A.No.401/2009

The Appellant/Accused No.1 viz., Baktha @ Padmanabhan, Male, aged 45 years S/O Murugesan was released on bail dt:27/11/2009 in CRL.MP.No.2/2009 in CRL.A.No.401/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A.No.401 of 2009

1.Baktha @ Padmanabhan

2.Elumalai

3.Gengammal

... Appellants/Accused 1 to 3

Vs.

State by:

Sub - Inspector of Police,
Thazhampur Police Station,
Kancheepuram District.
Crime No.194/2006

... Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records of the Sessions Judge, Mahilir Neethimandram, Chengalpattu in S.C.No.166/2007 and set aside the conviction and sentence in his order dated 09.07.2009.

For Appellants : Mr. R.Sankara Subbu Ramraj

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.side)

J U D G M E N T

This criminal appeal has been filed by the appellants/A1 to A3 against the judgment of conviction and sentence passed by the learned Sessions Judge, Mahilir Neethimandram, Chengalpattu, dated 09.07.2009 made in S.C.No.166 of 2007.

2.The brief facts of the prosecution case are as follows:-

On 23.08.2006, the complainant P.W.1's sister Mohana, the deceased was taking bath in the pump-set and at the time of changing her dress, A1 came behind her and tried to molest her. Mohana, the deceased informed the said incident to her husband. Again on 26.08.2006 when the deceased and her husband went to their field, at that time, the accused intercepted the deceased and her husband and warned the deceased and P.W.2, her husband that if they made any complaint against the accused, they will not allow the deceased and husband to remain in the village. On the same day evening when they returned from the field, A3 who is mother of A1 abused the deceased by saying as if she had illegal relationship with A1 for the past 6 months. By continuous harassment and torture made by A1, on 27.08.2006, at 9.00 am the deceased consumed pesticide poison, and she was taken to the Government hospital, and there she was declared dead, in respect of which P.W.1 lodged a report EX.P1.

3.P.W.11-Sub Inspector of Police received the report from P.W.1 and registered a case in Crime No.194/2006 under section 306/E/C 34 IPC. Ex.P7 is the printed FIR. Thereafter, the investigation was handed over to P.W.12 Inspector of Police. The Inspector of Police went to the scene of occurrence, prepared observation mahazar Ex.P3 and rough sketch Ex.P8 and recovered material object MO1 pesticide poison bottle and he also conducted inquest over the dead body and issued inquest report Ex.P9. After examining the medical officer and other witnesses altered the Section of offence into Section 306 r/w 34 IPC and filed the final report.

4.On perusal of the final report, the trial Court framed charges under Section 306 r/w 34 IPC and found there are materials available to implicate the accused under Section 4(b) of Tamil Nadu Prohibition of Women Harassment Act. Accordingly, the trial Court framed a second charge under Section 4(b) of the Tamil Nadu Prohibition of Women Harassment Act. In order to prove the charges, on the side of prosecution P.W.1 to P.W.12 were examined and exhibits P1 to P9 were marked and MO1 was marked.

5. When the trial Court examined the accused under Section 313 Cr.P.C., in respect of incriminating evidence available against them, they denied their complicity in the crime and pleaded innocence. However, they neither chose to examine any witness nor marked any documents.

6. The trial Court after considering the oral and documentary evidence, found A1 to A3 guilty of the offence under Section 4b of the Women Harassment Act. Accordingly, the trial Court convicted the accused and sentenced them to undergo rigorous imprisonment for five years with a fine of Rs.1,000/- in default to undergo six months simple imprisonment. Challenging the said conviction and sentence, the appellants/A1 to A3 have preferred this appeal.

7. Heard the learned counsel for the appellants and the learned Government Advocate (Crl.side) for the respondent.

8. The learned counsel appearing for the appellants would contend that there is no material whatsoever available on record to prove the charges under Section 306 r/w 34 IPC. Though, the law enforcing agency laid the final report implicating the accused under Section 306 r/w 34 of IPC, however, the trial Court framed a charge under Section 4b of Women Harassment Act of which is unwarranted when no ingredients are available to implicate the accused under Section 4b of the said Act. Admittedly, the deceased committed suicide in the agricultural field, at the relevant point of time, P.W.1 is the brother of the deceased. He was not available in the scene of occurrence or in the said village and he is residing in a village namely Tambaram. The deceased was residing at Siruseri. P.W.1 received information from P.W.2 and he reached the spot and made a complaint before Sub-Inspector of Police and it is also relevant to note that P.W.2 in his evidence he stated that there was initial complaint before the law enforcing agency as if A1 abused the deceased. However, no documents were marked before the trial Court in order to prove the said charge. Therefore, the statement to the effect that the accused abused the deceased is an improved version and cannot be pleaded. Hence, the learned counsel prays for acquittal of the accused.

9. The learned counsel appearing for the appellants further submit that based on A3's confession statement, A1 was implicated in the above said offence. Though confession of a co-accused cannot be a ground to implicate the other accused, that issue was legally settled before the Hon'ble Apex Court reported in AIR 1952 Supreme Court 159, wherein the Hon'ble Apex Court clearly held, confession of a co-accused must be corroborated with other evidence and therefore, implicating the accused solely on the basis of confession of A3 is not

sustainable. Hence, he prays for acquittal of the accused.

10.Per contra, learned Government Advocate (Crl.side) would submit that P.W.1, P.W.2 and P.W.9, all three prosecution witnesses clearly deposed with regard to the involvement of the accused in the above said crime and the accused persons jointly abused the deceased which led the deceased to commit suicide. Therefore, the judgment of the trial Court need not be interfered with.

11.In the light of the above submissions, now it has to be analysed whether the prosecution has proved the guilt of the accused beyond all reasonable doubt.

12.The evidence of P.W.1, the brother of the deceased indicates that the deceased was residing at Siruseri Village and P.W.1 was residing at Tambaram. On hearing the death of his sister Mohana, he rushed the spot and enquired about the said incident and thereafter, filed a complaint. His evidence further indicates that P.W.1 gathered information from P.W.2 and other local residents with regard to the abuse of the deceased by the accused which led the deceased to commit suicide.

13.The evidence of P.W.2, husband of the deceased indicates that on 23.08.2006 at about 5.30 pm., while he was proceeding to agricultural field, found that her wife chased A1 with stones and on enquiry, deceased revealed that A1 abused the deceased while she was taking bath in pump-set in agricultural field. Immediately, after receipt of the information, the said incident was informed to the local President. However, the local President instructed P.W.2 not to give any Police complaint. Thereafter, the accused A1 and A2, on the very next day again abused P.W.2 and deceased. However after 4 days on 27.08.2006 he heard the news as if deceased committed suicide in the agricultural field and the said occurrence was informed by his son, while he was searching his deceased mother in the agricultural field. The son aged about 14 years informed P.W.2 that the deceased requested her son to take care of his sister and brother and she declared that she will not be alive.

14.The evidence of P.W.4 to P.W.8 appears to be hearsay and they do not know what had actually happened when the deceased was committing suicide.

15.However, P.W.9, the then village president supported the prosecution case. However, from his evidence, it is seen that he is not an eye witness to the occurrence and he came to know only through P.W.2. Admittedly, prior to the deceased committing suicide, there was abuse by A1 in the agricultural field and he tried to catch her. Immediately, the

deceased chased away A1 and the same was informed to her husband P.W.2. Further, P.W.1 is the brother of the deceased. Admittedly, he is residing in Tambaram and on information, he reached Siruseri Village and gave a complaint before the respondent police.

16.It is curious to note that except P.W.1, P.W.2 and P.W.3 no other independent witnesses were examined in order to prove that the deceased committed suicide as she was abused. However, the abusement would not amount to incitement or abetment to force a person to commit suicide. In the present case, the law enforcing agency implicated the accused under Section 306 r/w 34 IPC and 4b of the Women Harassment Act. It is necessary to refer to the above said provisions, 306 r/w 34 IPC and Section 4b of Women Harassment Act.

306 IPC reads as follows:-

306.Abetment of suicide- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

34 IPC reads as follows:-

34.Acts done by several persons in furtherance of common intention - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

4B of Woman Harassment Act reads as follows:-

4-B. Harassment suicide.-(1) If any woman commits suicide and it is shown that soon before her death, she was subjected to harassment by any person or that in respect of her an offence under Section 294, 354 or 509 of the Indian Penal Code (Central Act XLV of 1860) was committed, such suicide shall be called the harassment suicide and such person shall be deemed to have abetted the suicide.

(2) Notwithstanding anything contained in Section 4, whoever abets harassment suicide shall be punished with imprisonment of either description for a term which may extend to ten years and with fine which shall not be less than fifty thousand rupees.

17.On a cumulative reading of the above said provisions, it makes it clear that Section 306 is abetment to force a person to commit suicide. Section 4b deals with harassment or cruelty soon before death.

18.The abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. In the present case, A1 abused the deceased on 23.08.2006, however, the deceased committed suicide on 27.08.2006 after four day of the occurrence.

19.On perusal on the evidence of P.W.2, it is seen that thee is no positive act on the part of the accused to instigate or aid in committing suicide. Hence, the charge under Section 306 IPC need to be interfered with. For charging under Section 306 IPC, there should be a live link or proximity link between the act of the accused and act of the deceased.

20.As per Section 4b of the Women Harassment Act, there must be materials to show that soon before her death, the deceased was subjected to cruelty or harassment. In other words the prosecution has to rule out possibility of accidental death and the prosecution has to show that before occurrence, there was cruelty or harassment.

21.In the present case, the alleged harassment occurred on 23.08.2006. However, the victim committed suicide only on 27.08.2006, in the absence of live link and material, implicating the accused under Section 4b of the Women Harassment Act is unsustainable.

22.However, no evidence available to implicate A2 and A3. On a perusal of entire evidence, the allegation is only against A1. However, no evidence is available to implicate A2 and A3. In the above said circumstances, the conviction and sentence in respect of A2 and A3 is set aside. However material is available to show that A1 abused the deceased on 23.08.2006 which is also corroborated by P.W.2. But, no ingredients are available to implicate A1 under Section 4b of Women Harassment Act.

23.However, I am inclined to convict the accused No.1 under Section 4 of Women Harassment Act to undergo six months rigorous imprisonment with a fine of Rs.10,000/-.

24.The criminal appeal is allowed in respect of the appellants/A2 and A3. The conviction and sentence as against the appellants/A2 and A3 in the judgment dated 09.07.2009 in S.C.No.166/2007 passed by the learned Sessions Judge, Mahilir Neethimandram, Chengalpattu, are set aside. The appellants/A2 and A3 are acquitted from the charges under Section 306 r/w 34 IPC and 4b of the Woman Harassment Act. The bail bond executed by them, shall stand terminated/discharged.

25.The criminal appeal is partly allowed in respect of the appellant/A1. The conviction imposed by the learned Sessions Judge, Mahilir Neethimandram, Chengalpattu, in S.C.No.166 of 2007 dated 09.07.2009 as against the appellant/A1 is confirmed, however, the sentence imposed on the first appellant is modified. The sentence of imprisonment imposed against the first appellant/A1 is reduced from five years rigorous imprisonment to six months rigorous imprisonment with a fine of Rs.10,000/-. The trial Court as well as the Investigating Officer shall take necessary and expeditious steps to secure the custody of the first appellant/A1 to undergo the remaining part of sentence.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AT

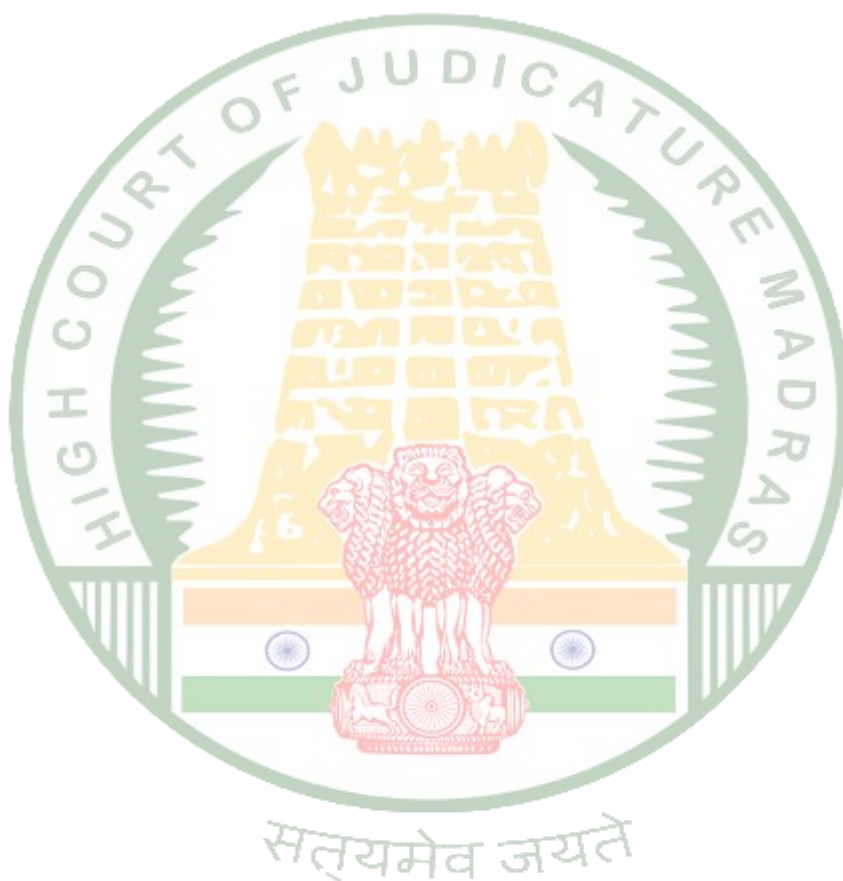
To

- 1.The Judicial Magistrate, No.1, Chengalpattu, Kancheepuram District.
- 2.The Chief Judicial Magistrate, Chengalpattu.
- 3.The Sessions Judge, Mahilir Neethimandram, Chengalpattu.
- 4.The Superintendent, Central Prison, Puzhal, Chennai
- 5.The Superintendent, Central Prison, Special Prison for women, Puzhal Chennai.
- 6.The Government Advocate (Crl.side) High Court of Madras.
- 7.The Sub Inspector Of Police, Thazhampur Police Station, Kancheepuram District
- 8.The District Collector, Kancheepuram District
- 9.The Director General of Police, Mylapore, Chennai
- 10.The Public Prosecutor, High Court, Madras.

Copy to
The Record Keeper,
Criminal Section,
High Court, Madras.

CrI.A.No.401 of 2009

CA (CO)
GSP (28/02/2019)



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