

BAIL SLIP

The Appellant/Accused namely M.Vijaya Kumar, S/o.Muthu was directed to be released on bail vide order dated 31.10.2011 made in CrI.M.P.1/2011 in CrI A.667/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.A.No.667 of 2011

M.Vijayakumar, (M/27 years)
S/o. Muthu,
No.5/8, Bypass Road,
Vaniyambadi.

... Appellant/Accused-1

..Vs..

State represented by its
Inspector of Police,
Vaniyambadi Town Police Station,
Vaniyambadi.

... Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment dated 12.10.2011 passed in S.C.No.79 of 2011 on the file of the Additional District and Sessions Court (Fast Track Court), Thirupathur, Vellore District.

For Appellant : Mr.V.Krishnamoorthy

For Respondent : Mr.G.Ramar
Government Advocate
(CrI. Side)

JUDGMENT

This criminal appeal has been preferred seeking to set aside the conviction made by judgment dated 12.10.2011 in S.C.No.79 of

2011 on the file of the Additional District and Sessions Court (Fast Track Court), Thirupathur, Vellore District.

2 The facts in brief leading to the filing of this criminal appeal are as under:

2.1 It is the case of the prosecution that the deceased Senthil Kumar had borrowed Rs.2,000/- from Vijayakumar (A1), which Vijayakumar (A1) had borrowed from a Finance Company; when Senthil Kumar did not return the money, the Finance Company started mounting pressure on Vijayakumar (A1); therefore, it is alleged that Vijayakumar (A1) and Ravichandran (A2) abducted Senthilkumar on 06.12.2002 and locked him up in the tailoring shop of Sampath Kumar (PW3) and thereby wrongfully restrained him demanding repayment of the amount; unable to withstand the torment Senthil Kumar committed suicide by hanging in the tailoring shop of Sampath Kumar (PW3) on 06.12.2002.

2.2 On the complaint (Ex-P1) lodged by Kanagaraj (PW1), Village Administrative Officer, Arjunan (PW9), Inspector of Police, registered a case in Crime No.922 of 2002 on 07.12.2002 under Section 174 Cr.P.C. and prepared the printed FIR (Ex-P14). He went to the place of occurrence and had it photographed. He (PW9) prepared the observation mahazar (Ex-P2) and rough sketch (Ex-P15), in the presence of witnesses Murali (PW5) and Ravi (not examined). He conducted inquest over the body of the deceased Senthil Kumar and prepared the inquest report (Ex-P16). He despatched the body to the Government Hospital, Vaniyambadi, where, Dr.Lakshmanan (PW8) performed autopsy and issued the post-mortem certificate (Ex-P9). After obtaining the Viscera Report (Ex-P11) and the Hyoid Bone report (Ex-P10), Dr.Lakshmanan (PW8) given following opinion:

"Asphyxia death due to suicidal hanging"

The Investigating Officer arrested Vijayakumar (A1), Ravichandran (A2), Muthu (A3), Ravi (A4) and Shiva (A5) on 08.12.2002 and based on their disclosure, recovered the auto-rickshaw (MO2), that is said to have been used by the accused to abduct Senthilkumar, under the cover of mahazar (Ex-P19) in the presence of witnesses, Krishnan (PW6) and Munirathinam (PW7). After examining some witnesses and obtaining various reports from the experts, the Investigating Officer filed final report in P.R.C.No. 8 of 2007 before the Judicial Magistrate, Vaniyambadi, for the offences under Sections 365, 342 and 306 IPC, against the accused.

2.3 On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.79 of 2011 and was

made over to the Additional District and Sessions Court (Fast Track Court), Thirupathur, for trial.

2.4 The Trial Court framed the following charges:

(a) under Section 365 IPC, against Vijayakumar (A1) and Ravichandran (A2), for the abduction of Senthil Kumar (deceased) on 06.12.2002 in the auto-rickshaw bearing Registration No. TN 23 P 5108;

(b) under Section 342 IPC, against Vijayakumar (A1) to Shiva (A5), for wrongfully confining Senthil Kumar in the tailoring shop of Sampathkumar (PW3);

(c) under Section 306 IPC, against Vijayakumar (A1) to Shiva (A5), for the abetment of the suicide of Senthil Kumar. and when questioned the accused pleaded "not guilty".

2.5 To prove the case, the prosecution examined ten witnesses and marked twenty one exhibits and four material objects.

2.6 When the accused were questioned under Section 313 Cr.P.C about the incriminating circumstances appearing against them, they denied the same. On behalf of the accused, no witness was examined nor any document marked.

2.7 After considering the evidence on record and hearing either side, the Trial Court, by judgment dated 12.10.2011 in S.C.No.79 of 2011, has acquitted Ravichandran (A2), Muthu (A3), Ravi (A4) and Shiva (A5) of all the charges, but, has convicted and sentenced Vijayakumar (A1) as follows:

Provision under which convicted	Sentence
Section 365 IPC	Two years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment.
Section 342 IPC	Six months simple imprisonment.
Section 306 IPC	Seven years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment.

2.8 Challenging the above conviction and sentence, Vijayakumar (A1) is before this Court.

3 Heard Mr.V.Krishnamoorthy, learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the State/respondent.

4 The learned counsel for the appellant made the following submissions:

(a) there is absolutely no legal evidence to show that Senthil Kumar was abducted by the appellant on 06.12.2002;

(b) the Trial Court has acquitted Ravichandran (A2) to Shiva (A5) of the charge under Section 365 IPC, but, strangely convicted Vijayakumar (A1) of the said charge;

(c) there is also no legal evidence to show that Senthil Kumar was illegally confined in the tailoring Shop of Sampathkumar (PW3). In fact, the Trial Court has acquitted Ravichandran (A2) to Shiva (A5) of this charge also;

(d) there is also no material to show that Vijayakumar (A1) had committed the act of abduction which had resulted in the suicide of Senthil Kumar. Hence, the conviction of the appellant under Section 306 IPC is also unsustainable;

(e) the prosecution have failed to examine one Alexander who is said to have told the police that it was Vijayakumar (A1) who brought Senthil Kumar and the non-examination of the said Alexander is fatal to the case of the prosecution.

(f) undue reliance has been placed by the Trial Court on the evidence of Unnamalai (PW2), whose marital relationship with Senthil Kumar itself was questionable.

5 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions of the learned counsel for the appellant.

6 This Court gave its anxious consideration to the rival submissions.

7 The facts which have been established beyond doubt are:

(a) Vijayakumar (A1) is the son of Muthu (A3);

(b) Vijayakumar (A1) and his father Muthu (A3) were the owners of Salem Hotel;

(c) Sampathkumar (PW3) was having his tailoring shop in a portion in the first floor of Salem Hotel;

(d) Senthil Kumar was found hanging on 07.12.2002, morning, in the tailoring shop of Sampathkumar (PW3).

8 As rightly contended by the learned counsel for the appellant, there is absolutely no legal evidence to show that Senthil Kumar was abducted on 06.12.2002 by Vijayakumar (A1) along with Ravichandran (A2). There is also no legal evidence to show that after abduction, Vijayakumar (A1) to Shiva (A5) wrongfully detained Senthil Kumar in the tailoring shop of Sampathkumar (PW3).

9 The reason for the absence of legal evidence is not far to seek, because, for the incident that had taken place in the year 2002, the trial had begun only in the year 2011 and during the intervening period of nine years, the evidence would have got obliterated. However, that cannot be a good reason to sustain the conviction of the appellant for the offences under Sections 365 and 342 IPC. However, as regards the charge under section 306 IPC, this Court carefully perused the evidence of Unnamalai (PW2).

10 Unnamalai (PW2), in her examination-in-chief on 22.06.2001, has stated that after the death of her husband, she got married to Senthil Kumar and was living with him for about ten years; during the time of the occurrence, she (PW2) was working as cleaner in Ganesh Hotel, Tirupathur; Senthil Kumar was working in a hotel near Jolarpet as supplier; prior to that, Senthil Kumar was working in Salem Hotel belonging to Muthu (A3); Vijayakumar (A1) is the son of Muthu (A3); one month prior to Senthil Kumar's death, he had borrowed Rs.2,000/- from Vijayakumar (A1) to meet domestic expenses; after borrowing money, Senthil Kumar stopped going for work to Salem Hotel and joined the hotel at Jolarpet; Vijayakumar (A1) had borrowed Rs.2,000/- from a Finance Company and had given it as loan to Senthil Kumar; therefore, Senthil Kumar paid two instalments of Rs.400/- each directly to the Finance Company; one week prior to his death, Vijayakumar (A1) came along with two other persons to her house and created a ruckus in the absence of Senthil Kumar, demanding repayment of the loan; when Senthil Kumar returned home, she told him about this and on Wednesday, she called Vijayakumar (A1) and gave him Rs.800/-; at that time, Vijayakumar (A1) threatened her that the balance money should also be paid, failing which, he would finish off Senthil Kumar; when she told about this to Senthil Kumar, he did not go for work on Thursday; on Friday, he went for work, but, did not return home; on Saturday, she learnt that Senthil Kumar's body

was hanging in the tailoring Shop; she went and saw that. Her evidence that she learnt that Senthil Kumar was abducted and confined illegally in the tailoring Shop is inadmissible as it is hearsay. She was subjected to grilling cross-examination, but the defence was unable to make any substantial dent in her testimony.

11 In the cross examination, Unnamalai (PW2) has stated that she got acquainted to Senthil Kumar while both of them were working in Ganesh Hotel; Senthil Kumar was drawing Rs.100/- per day as wages; Senthil Kumar would go for work at 6.00 a.m., and return only at 6.00 p.m., if it is first duty; if he goes for second duty, he would return at 10.00 p.m. She denied the suggestion that she did not get married to Senthil Kumar at all and that Senthil Kumar was keeping her as his mistress. She also denied the suggestion that Senthil Kumar would sleep in the tailoring shop above Salem Hotel, after his duty hours.

12 As regards the incident that took place on Wednesday, Unnamalai (PW2) has clearly stated in the cross-examination that Vijayakumar (A1) came around 4.00 p.m. with three persons and collected Rs.800/- from her. She has further stated that Vijayakumar (A1) intimidated her by saying that he will lift her husband, if the money was not returned ("Lift" in colloquial Tamil, means abduction and finishing off). She has further stated that her husband told her that, he was scared to go for work. Ultimately, it was suggested to her that, Senthil Kumar would normally sleep in the tailoring shop, which suggestion, she denied.

13 Sampathkumar (PW3), in his evidence has stated that, he has a tailoring shop in the first floor of the hotel run by Muthu (A3); he would open the shop at 9.30 a.m. and close it around 8.30 p.m.; whenever he goes out on urgent work, he would give the keys of his tailoring shop to Vijayakumar (A1) or Muthu (A3); on 06.12.2002, around 6.30 p.m., he closed his shop for going to temple and handed over the key to Muthu (A3) and went; next day, at 9.00 a.m., when he came to the shop, Vijayakumar (A1) and Muthu (A3) told him that their employee has hanged himself in his shop; thereafter, they all went to the Police Station and lodged a complaint.

14 In the cross-examination, Sampathkumar (PW3) has clearly stated that the employees of the hotel will sleep in the hotel only since there are facilities for them. He has also stated that, he has two employees and they also will not sleep in his shop. However, he has further stated that occasionally, people working in the hotel will sleep in his shop.

15 The mahazar witnesses for the recovery of the auto-rickshaw turned hostile to the case of the prosecution and nothing comes out of it. Therefore, we have only the evidence of Unnamalai (PW2) and Sampathkumar (PW3) in this regard. The defence of the appellant that the deceased Senthil Kumar would use the tailoring Shop for sleeping in night hours has been belied inasmuch as Unnamalai (PW2) has clearly stated that after working hours, Senthil Kumar will return home. In fact, it is in the evidence of Unnamalai (PW2) that the deceased Senthil Kumar left Salem Hotel belonging to the appellant and his father after he was not able to repay the loan and joined a hotel at Jolarpet. Hence, there is no question of Senthil Kumar using the tailoring shop of Sampathkumar (PW3) in the night hours for sleeping.

16 It is not the case of the defence either that the deceased Senthil Kumar was an employee of Salem Hotel at the time of his death. Therefore, there is no possibility for Senthil Kumar to have slept in the tailoring shop of Sampathkumar (PW3) on 6/7.12.2002. Strangely, Vijayakumar (A1) and Muthu (A3) who knew about the death of Senthil Kumar did not inform the police immediately and they were waiting for the arrival of Sampathkumar (PW3). Sampathkumar (PW3) had handed over the keys of his shop to Muthu (A3), the father of Vijayakumar (A1) on 06.12.2002, around 6.00 p.m. and had gone to temple and returned only on the next day. Therefore, the burden is on Vijayakumar (A1) and Muthu (A3) under Section 106 of the Evidence Act to explain as to how Senthil Kumar gained entry into the tailoring shop of Sampathkumar (PW3) and committed suicide on 06/07.12.2002. If this is viewed in the prism of the evidence of Unnamalai (PW2), it is clear that the threat and intimidation by Vijayakumar (A1) had traumatised Senthil Kumar resulting in his suicide.

17 Hence, this Court does not find any infirmity in the conviction of Vijayakumar (A1) under Section 306 IPC. However, this Court holds that there is no legal evidence to uphold the conviction of Vijayakumar (A1) under Sections 365 and 342 IPC.

18 Accordingly, the conviction and sentence slapped on Vijayakumar (A1) by the Trial Court, by judgment dated 12.10.2011 in S.C.No.79 of 2011, for the offences under Sections 365 and 342 IPC are set aside and the conviction under Section 306 IPC stands confirmed. However, the sentence of seven years rigorous imprisonment is reduced to three years rigorous imprisonment and the sentence of fine and the default sentence shall remain the same.

In the result, this criminal appeal is partly allowed. The Trial Court is directed to secure the appellant and commit him to prison for undergoing the remaining period of sentence, if any.

dua/nsd

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court,
Thirupathur,
Vellore.
2. Thro' The Principal Sessions Judge,
Vellore.
3. The Superintendent,
Central Prison,
Vellore.
4. The Inspector of Police,
Vaniyambadi Town Police Station,
Vaniyambadi.
5. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.V.Krishnamoorthy, Advocate, Sr.No.6244

Crl.A.No.667 of 2011

kak(06/03/2019)

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