

Bail Slip.

The Appellant namely Dravidamani in CrI.A. 724/2011 (Sole accused in Sessions Case No. 32/2011 on the file of the Additional Sessions Judge at Karaikal) was released on bail vide order of this court dated 16.11.2011 and made in M.P.No.1 of 2011 in CrI.A.724/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|-------------------------|---------------------------|
| Reserved on: 08.02.2019 | Pronounced on: 21.02.2019 |
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Coram:

The Honourable Dr. Justice G. Jayachandran

Criminal Appeal No. 724 of 2011

Dravidamani,  
S/o. Jayabal,  
No. 40, Valluvar Street,  
Neravy, Karaikal.

... Appellant/Accused

/versus/

Union Territory of Puducherry,  
Rep by,  
The Station House Officer,  
Neravy Police Station,  
Karaikal.

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, against the judgment of conviction and sentence passed by the Additional Sessions Court, Karaikal, dated 09.11.2011 made in S.C.No.32 of 2011.

For Appellant : Mr. S. Sounthar

For Respondent : Mr. D. Bharatha Chakravarthy  
Public Prosecutor (Puducherry)

J U D G M E N T

The Appellant is the accused in S.C.No.32 of 2011 before the Additional Sessions Judge, Karaikal. The trial Court found him guilty for offence under Section 306 of I.P.C and

acquitted him for charge under Section 417 of I.P.C was sentenced him to undergo 3 years R.I and a fine of Rs.2,000/- in default to undergo S.I for 2 months.

2. The Appellant/Accused was charged for offences under Section 417 and 306 of I.P.C. The substance of the charge against the accused is that during the period 2008-2009 the accused had affair with one Rajalakshmi resident of Valluvar Street, Neravy, Karaikal and the Appellant/accused gave promise to marry Rajalakshmi but later refused, cheated and also abated Rajalakshmi to commit suicide by consuming Vasmol 33 Hair Oil.

3. To prove the charge, the prosecution case has examined 13 witnesses and 11 Exhibits were marked. According to the prosecution R.Govindaraj (PW.1) father of deceased Rajalakshmi, on the day of incident at 11.00 a.m, he received a phone call from the College of his daughter informing him that, she was not studying well and irregular in attending the College. When the Rajalakshmi came home at about 7.00pm, her father enquired about the complaint received from the College. Rajalakshmi promised to her father that hereinafter, she will regularly attend the College. After taking dinner, she had slept outside the house. The next day around 5.00 a.m or 5.30a.m R.Govindaraj wife told him that there is swelling in the Rajalakshmi neck and Rajalakshmi told her that she has consumed Vasmol 33 Hair Oil immediately, Rajalakshmi was taken to Government Hospital, Karaikal for treatment, within one hour, she died. Rajalakshmi's father went to police station and informed about the incident, based on the complaint (Ex.P.1), the respondent police registered the F.I.R (Ex.P.6).

4. The Executive Magistrate, Karaikal conducted inquest, in the inquest, he came to know that the accused who is living opposite to the house of Rajalakshmi had close intimacy with her and had impregnated. When Rajalakshmi asked him to marry, the accused refused to marry. Therefore, frustated over his refusal, Rajalakshmi has consumed Vasmol 33 Hair Oil during the night hours on 23.11.2009. Thereafter, respondent police had stated their investigation suspecting the role of accused in the suicidal death of Rajalakshmi. G.Sountharavalli (PW.2) mother of the victim, Sankar @ Jayasankar (PW.4) brother of the victim, G.Jayabarathi (PW.7) has disclosed their knowledge about the intimate relationship between Rajalakshmi and the accused and the refusal of the accused to marry Rajalakshmi. Hence, final report was filed charging the accused for offences under Section 417 and 306 of I.P.C.

5. The trial Court believed the case of the prosecution

and held that the accused is known to the deceased Rajalakshmi very personally. Knowingly, she has moved with the accused. The post-mortem report reveals that at the time of death, the Rajalakshmi was pregnant carrying three months fetus, the accused a married man with two children earlier promised to the deceased he will marry her and later cheated her by refusing to marry found not proved. The contention of the prosecution that Rajalakshmi was fraudulently induced by the accused to give consent for the intercourse on false promise to marry her was rejected. However, the Court held that the prosecution has prove the case against the accused for offence under Section 306 of I.P.C holding that the evidence of PW.2, PW.6 and PW.7 are trust-worthy and believable.

6. Aggrieved by the finding, leading to conviction and sentence the accused has preferred the appeal on the ground that the First Information Report (Ex.P.6) given by PW.1 who is the father of the victim does not implicate the accused. Except, G.Jayaprakash (PW.6) and G.Jayabarathi (PW.7) who are the brothers of the victim girl. There is no other independent witness to prove the alleged intimacy between the accused and the deceased. P.Senthil @ Senthilkumar (PW.8) and G.Kalidass (PW.9) who are independent witnesses have turned hostile. Therefore, the Court below has erred in convicting the accused purely based on the evidence of victim's family members. There is no evidence available on record to prove abatement by the accused to attract the ingredients of Section 306 of I.P.C.

7. Pointing out that none of the witness to the inquest report were examined, except R.Kaliamoorthy (PW.5) and based on the evidence of PW.5 and the trial Court has convicted the accused for offence under Section 306 of I.P.C. Therefore, prayed for acquittal.

8. Pointing out that the inquest which was alleged to have been recorded on 24.11.2009 but reached the Court only on 24.03.2010, after lapse of more than four months, the learned counsel for the appellant contents no credence to be given to the inquest report or to PW.5 one of the witness to the inquest report.

9. Per contra, the Learned Public Prosecutor representing for the State of Puducherry would submit that the first information report given by PW.1 though did not implicate the accused. The fact disclosed in the information is that Rajalakshmi consumed Vasmol 33 Hair Oil, which intention to commit suicide. As a parent in the given situation they have informed the police what they heard from the daughter at the

time of admitting the hospital. It was later PW.2, PW.4, PW.6 and PW.7 have shared the informations known to him exclusively. Since, the information was pertaining to the honour of the family, they have not disclosed it to others, prior to the death of Rajalakshmi. However, the residence near the house who were aware of the affair and therefore they have disclosed it to the police during the inquest about the cause of death. Thus, the investigation has proceeded suspecting the accused. The post-mortem report (Ex.P.3) reveals that two to three months old fetus were present in the uterus of the deceased.

10. PW.2 (G.Sountharavalli) mother of the deceased had deposed that on the night of the incident, she saw her daughter Rajalakshmi weeping, at that time, on enquiry Rajalakshmi has disclosed to her about her pregnancy and the refusal of the accused to marry her and told her to die.

11. PW.6 (G.Jayabarathi) one of the brother of the victim had seen the accused and the deceased together two days before the incident. When he enquired the deceased, she has disclosed to him about the affair she have with the accused. Her three months pregnancy and refusal of accused to marry her. In the light of overwhelming evidence given by the family members of the deceased, the trial Court has rightly convicted the accused for offence under Section 306 of I.P.C.

12. The proven facts in the case from the post-mortem certificate is that Rajalakshmi was admitted in the Government Hospital, Karaikal and she died due to consumption of Vasmol 33 Hair Oil. At the time of death, she was carrying two to three months old fetus. The doctor who has conducted autopsy was examined as PW.3 (Dr.Narasimamurthy), the post-mortem report is marked as Ex.P.3. PW.3 had deposed that though the fetus was preserved, it was not subjected to D.N.A test.

13. Initially, the case was registered only under Section 174 of Cr.P.C reporting unnatural death. Later after the inquest, the police has got the information about the illicit affairs between the accused and deceased. Thereafter, father, mother and brothers of the deceased have disclosed the informations which they know about the affairs. In this regard, the testimony of PW.1 (R.Govindaraj) father and PW.2 (G.Sountharavalli) mother, gains very much significance since, it appears very natural and reliable. On the date of occurrence, PW.1 (R.Govindaraj) has received phone call from the college. They have reported to him that Rajalakshmi is irregular to college and she is not concentrating in her

studies. At 7.00 P.M, PW.1 (R.Govindaraj) has reprimanded his daughter, thereafter PW.2 (G.Sountharavalli) has noticed her daughter weeping when she enquired her daughter. She has disclosed to her about her illicit affair with the accused, her pregnancy due to the intimacy with him, the refusal of the accused to marry her and blaming her character for the pregnancy and scolded to die. The next day PW.2 has found her daughter with swollen neck. She come to know from her daughter that she has consumed Vasmol 33 Hair Oil. Immediately, Rajalakshmi was taken to the hospital. Within few hours, she has lost her breath.

14. The sequence of event placed by the prosecution are cogent and corroborates to each other. The hostility of PW.8 and PW.9 noway dent the case of the prosecution, neither the close relationship between the other prosecution witnesses throw any doubt upon the prosecution case. Therefore, this Court finds no error in the conclusion of the trial Court. Accordingly, the Criminal Appeal is dismissed. The respondent police is directed to secure the Appellant and commit him to prison to undergo remaining period of sentence.

-s/d-  
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.II  
Karaikal.
2. Do Thro The Chief Judicial Magistrate  
Puducherry.
3. The Additional Sessions Judge  
Karaikal.
4. Do Thro The Principal Sessions Judge  
Puducherry.
5. The Station House Officer  
Neravy Police Station,  
Karaikal.

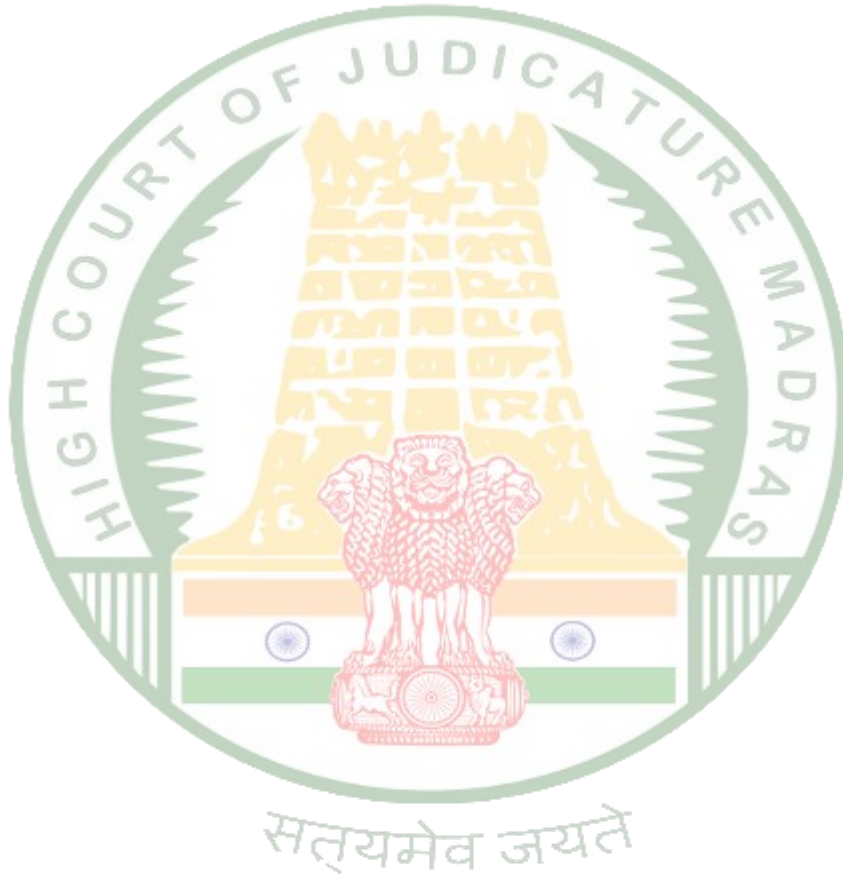
Copy to

The Section officer  
Criminal Section  
High Court, Madras 104.

+1 CC to Mr.S.Sounthar, Advocate sr 16161.  
+1 CC to Public Prosecutor sr 16796.

Criminal Appeal No.724 of 2011

GJ (CO)  
SP(19/03/2019)



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