

Bail Slip

Appellant/Accused namely R.Chawdeshwaran S/o.Raman in S.C.No.288/10 on the file of the Additional District Sessions Judge, Fast Track Court II, Salem(In Charge Mahila Court, Salem) was directed to be released on bail as per order of this court dt.19/12/11 in MP.1/11 in Crl.A.739/11.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.739 of 2011

R.Chawdeshwaran Appellant/Accused

vs

State by
Inspector of Police,
Jalakandapuram,
Nangavalli Police Station,
Salem District.
(Crime No.50 of 2009)

..... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Code of Criminal Procedure, against the judgment and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court II, Salem (In-Charge), Mahila Court, Salem, dated 31.10.2011 in S.C.No.288 of 2010.

For Appellant : Mr.Chinnasamy

For Respondent : Mr.T.Shanmugarajeswaran

Government Advocate (Crl.Side)

JUDGMENT

The respondent police registered a case against the appellant/accused for the offence under Sections 450 and 376(i) IPC. During the investigation, the victim was died and the Section was altered into 306 IPC. After the investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No-1, Mettur, for the offence under Section 450, 376 and 306 IPC. The learned Judicial Magistrate No-1, Mettur, taken the charge sheet on file in P.R.C.No.26 of 2009, since the offence is exclusively triable by the Court of Sessions and the offence is against the women, the case was

committed to the Mahila Court, Salem. The learned Sessions Judge, Mahila Court, Salem, taken the case on file in S.C.No.288 of 2010 and after completing the legal formalities framed charges against the appellant for the offence under Section 450, 376(i) and 306 IPC.

2 During trial in order to prove the case of the prosecution as many as 12 witnesses were examined and 19 documents were marked besides three material objects. After completing the evidence of the prosecution, when incriminating circumstances culled out from the prosecution witnesses and put before the appellant, he denied as false. On the side of the defence, no oral and documentary evidence was produced.

3 The learned Sessions Judge, Mahila Court, Salem, after completing trial and after hearing the arguments on either side and also perused the entire records come to the conclusion that the appellant has not committed the offence under Section 376 (i), 450 IPC and acquitted him for the above said offences and the learned Sessions Judge, Mahila Court, Salem, found that the appellant has committed the offence only under Section 306 IPC and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo one year Simple Imprisonment.

4 Challenging the said judgment of conviction passed by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.288 of 2010, the convict has preferred the appeal before this Court.

5 The learned counsel for the appellant would submit that P.W.1 is the husband of the victim, he has not supported the case of the prosecution and he has turned hostile. P.W.2 is not the eye witness and therefore her evidence is also not reliable. When the victim was admitted in the hospital, the learned Judicial Magistrate No-6, Salem/P.W.7, recorded the dying declaration from the victim. In the dying declaration the victim has not stated anything about the appellant, the victim has spoken only about P.W.1 husband of the victim was suspecting her fidelity. Hence, she poured Kerosene and set fire on her own. On reading of the evidence of P.W.7 and also the dying declaration, the case of the prosecution is suspected one and they have not disbelieved the evidence of P.W.2 and not accepted the case of the prosecution and acquitted the appellant for the offence under Section 376(i) and 450 IPC. There is no material to show that the appellant had an intention to kill her, he trespassed into the house of the victim and he raped her without her consent. At the same time, the trial Court failed to consider the fact, even in the dying declaration the victim has not stated anything about the appellant, she has stated that her husband suspected her fidelity. Therefore, she attempted to

commit suicide. At the time of giving dying declaration, even P.W.1 husband of the victim has not stated anything about the appellant. The learned Sessions Judge, Mahila Court, Salem, failed to consider the above aspects and mechanically convicted the appellant for the offence under Section 306 IPC, which warrants interference of this Court.

6 The learned Government Advocate (Criminal Side) for the respondent would submit that the prosecution has proved its case beyond reasonable doubt. P.W.2 is the aunty of the victim, has given the complaint and also she has clearly spoken that on the date of occurrence, the appellant went to the house of the victim for taking rope at the time, he misbehaved with the victim. When the victim told her husband/P.W.1 he has not reacted any thing. Subsequent to that, P.W.2 taken the victim to her house, the victim told that when she was in her house the accused forcefully misbehaved and raped her. The postmortem certificate also corroborate the same. Though, there is no eye witnesses for the offence under Sections 376 and 450 IPC, the evidence of P.W.2 has clearly stated that due to the rape committed by the appellant against victim she committed suicide. Therefore, the trial Court rightly appreciated the evidence of P.W.2. Which does not warrants any interference of this Court.

7 Heard the learned counsel for the appellant and the learned Government Advocate(Criminal Side) for the respondent and perused the materials available on record.

8 It is specific case of the prosecution is that on 16.02.2009 at about 01.30p.m., the appellant trespassed into the house of the victim and forcefully raped her without her consent. Therefore, the next day on 17.02.2009 at about 07.00p.m, the victim poured kerosene on her body and set fire on her own. Therefore, she was immediately taken to the Government Hospital, salem. On 23.02.2009 she died at the hospital while she was under treatment. Therefore, the case was registered against the appellant for the offence under Sections 450, 376 and 306 IPC, so far as under Sections 450 and 376 are concerned. Though the trial Court has acquitted the accused and given the findings that the prosecution has not proved its case beyond reasonable doubt for the offence under Section 450 and 376 IPC, as against the said finding the prosecution has not preferred any appeal or revision before this Court. But, the convict alone has filed this appeal before this Court as against the conviction imposed by the trial Court for the offence under Section 306 IPC.

9 Therefore, this Court cannot go beyond the scope of the appeal. Since this Court is an appellate Court it can only re-appreciate the entire evidence and give a finding on the grounds

of the appeal raised by the appellant.

10 In order to prove the case of the prosecution 12 witnesses were examined on behalf of the prosecution. On reading of the evidence P.W.1 is none other than the husband of the victim and he has not stated anything about the occurrence and he has not supported the case of the prosecution and also during the examination he turned hostile. Even the victim while she was under treatment in the hospital, based on the advice of the Doctor, P.W.7/ Judicial Magistrate has recorded the dying declaration. In the said dying declaration, the victim has not spoken anything about the appellant and on reading of the evidence of P.W.1 the husband of the victim and the dying declaration made by the victim, there is no allegations levelled against the appellant. Even in the dying declaration, the victim has stated that her husband/P.W.1 suspected her fidelity. Therefore, she mentally upset and poured the kerosene and set fire on her own. P.W.2 has stated that the appellant raped the victim, since the parents of the victim were not alive, she only arranged the marriage to P.W.1 and from the date of the marriage there were a quarrel between the victim and P.W.1. On 16.02.2009, the appellant entered into the house of the victim and raped her. Since she was looking sad P.W.2 asked about that she told the occurrence to her husband. Immediately, he informed to the villagers and they called the appellant and subsequently, she committed suicide. The prosecution has not examined any of the villagers or any of the middle men or panchayatar who called the appellant. Further, P.W.3 none other than the husband of P.W.2, except P.W.2 and P.W.3 no one has spoken against the appellant. Even the victim set fire she was surviving for more than 5 days and dying declaration was also recorded, as already stated that she has not stated anything about the appellant and there is no allegations against the appellant, which creates suspicious that the prosecution has not proved its case beyond reasonable doubt and failed to investigate into the matter properly failed to establish its case beyond reasonable doubt. Therefore, the benefit of the doubts should be extended to the appellant.

11 On reading of the dying declaration recorded by the learned Judicial Magistrate/P.W.7 which creates doubts therefore, the benefit of doubts has to be extended to the accused. In this case, this Court found that the prosecution has failed to establish its case beyond reasonable doubt. Though, the trial Court rightly, acquitted the appellant for the offence under Section 450 and 376 IPC, but wrongly convicted the accused for the offence under Section 306 IPC, without any material evidence. Especially the victim has not stated anything about the involvement of the appellant. Therefore, this Court in the compelled circumstances found that the prosecution has failed to

establish the case beyond reasonable doubt and the judgment of the trial Court is liable to be set aside.

12 In the result, the Criminal Appeal is allowed. The fine amount if any paid by the appellant is ordered to be refunded, the bail bond if any executed shall stand cancelled.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

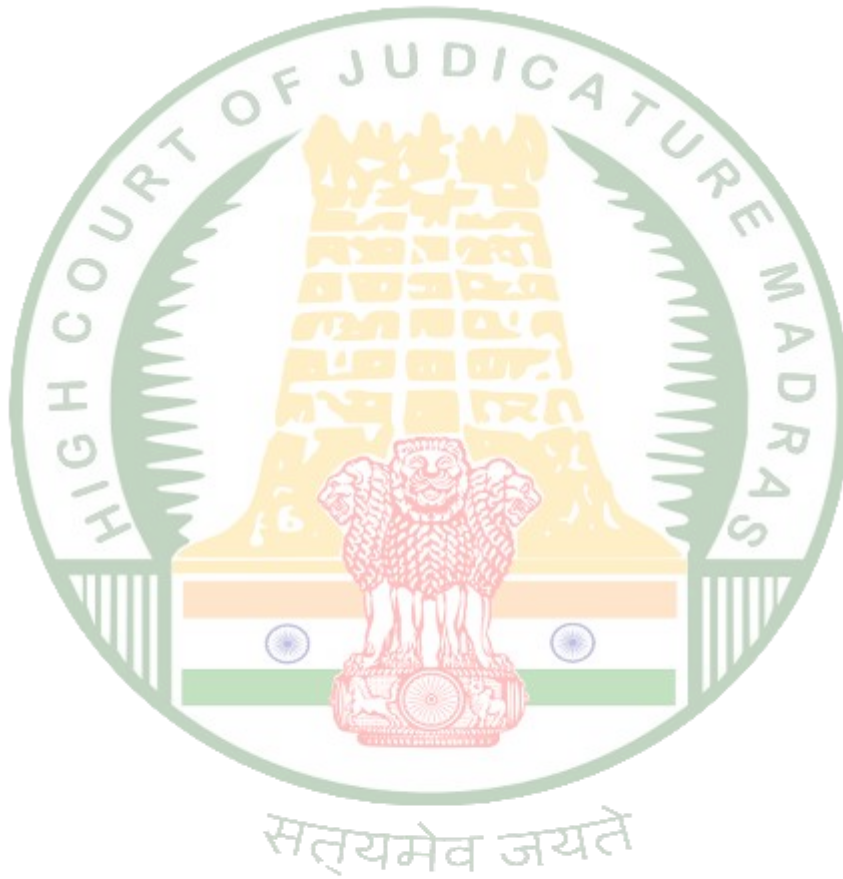
- 1.The Additional District and Sessions Judge,
Fast Track Court II (In-Charge),
Mahila Court, Salem,
- 2.Inspector of Police,
Jalakandapuram,
Nangavalli Police Station,
Salem District.
- 3.The Public Prosecutor,
High Court,
Chennai.
- 4.The Judicial Magistrate No.1,
Mettur.
- 5.The Chief Judicial Magistrate,
Salem.
- 6.The Principal District and Sessions Judge,
Salem.
- 7.The Superintendent,
Central Prison,
Coimbatore.
- 8.The District Collector,
Salem.
- 9.The Director General of Police,
Mylapore.

10. The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.V.Chinnasamy, Advocate sr.59576

Crl.A.No.739 of 2011

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