

BAIL SLIP

The Appellant / Accused namely Dharmaraj, S/o.Madhaiyan, aged 20 years old, was directed to be released on bail as per order dated 27/04/2012 in M.P.No.1/2012 in CrI.A.No.287/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2019

CORAM:

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN

Criminal Appeal No.287 of 2012

Dharmaraj ..... Appellant / Accused

Vs

State rep. By The Inspector of Police,  
Kondalampatti Police Station,  
Salem.

(Crime.No.316 of 2003) ..... Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374 of Criminal Procedure code, against the conviction and sentence imposed upon the accused by the learned Sessions Judge, Mahila Court, Salem in S.C.No.70 of 2007 dated 29.01.2010 for the offence under Section 306 I.P.C.

For Appellant : Mr. S. Swamidoss Manokaran

For Respondent : Ms.P.Kritika Kamal  
Government Advocate

J U D G M E N T

The appellant herein is the sole accused in S.C.No.70 of 2007. The case was tried for offence under Section 306 IPC alleging that he has abated his wife to commit suicide. The trial Court found him guilty and sentenced him to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default three months Rigorous Imprisonment. Aggrieved by the judgment of conviction and sentence, the present appeal is filed.

2. The learned counsel appearing for the appellant would submit that the Trial Court has miserably failed to consider the

embellishment in the prosecution version which is totally in contradiction with the complaint, RDO report and the evidence of independent witnesses. Carried away by the improvised and exaggerated false case of P.W.1 and P.W.2, the trial Court has held the accused guilty because the death of Gomathi who is the wife of the appellant died within a period of ten months of her marriage and she was found hanging in her matrimonial home. On completion of investigation, charge sheet was filed alleging offence under Sections 498-A and 306 I.P.C. However, the trial Court while framing the charges, thought fit that there is no ingredient for 498(A) IPC. Framed charges only for Section 306 IPC. While so, the evidence placed by the prosecution before the Court for appreciation, it failed to conclusively prove that the accused abetted the deceased to commit suicide.

3. Attributing bad character on the accused, the prosecution witnesses P.W.1 and P.W.2 has prejudiced the Trial Court to hold the accused guilty. Whereas, bad character of a person cannot be a relevant fact for holding him guilty for abatement.

4. The learned counsel appearing of the appellant would point out that the complaint/Ex.P1 given by P.W.1, does not disclose any criminal act against the appellant. In fact, according to the complaint, mother of the deceased eloped with some body else deserting her husband few years back, so, the deceased was in talking terms with her mother. In the said circumstances, the deceased was depressed, when she was requested by her in-law to speak with her mother, which the deceased was not interested. There is no aid or assistance or abatement by the accused forcing the deceased Gomathi to commit suicide. However, the trial Court considering the evidence of P.W.4 and P.W.10 independent witnesses, but the Investigation Officer has held that prosecution has proved the guilt of the accused beyond doubt.

5. Per contra, the learned Government Advocate would submit that the Observation Mahazar (Ex.P.2) and the other prosecution witnesses has deposed in unison that the victim Gomathi was found hanging in her matrimonial home. P.W.1, the paternal uncle of the deceased who was taking care of the deceased and arranged for her marriage has deposed about the demand of money by the accused for his wayward life and forcing the deceased to have cordial relationship with her estranged mother against the wish of the deceased with intention to receive money from Pusha, the mother of the deceased. When there is ample evidence to show that the deceased was subjected to harassment in view of getting monetary benefit, the presumption under Section 113-A of the Evidence Act gets attracted. The accused failed to rebut the presumption. So, the Trial Court has rightly held him guilty.

6. In short, the learned Government Advocate would submit that the prosecution has proved that Gomathi died by committing suicide. She and the appellant got married 10 months prior to the incident. The scene of occurrence is the matrimonial home where the deceased and the accused were living together. P.W.1, P.W.2 and P.W.4 have deposed against the accused regarding dowry harassment. Therefore, these evidences are sufficient to convict the accused for the offence under Section 306 IPC.

7. Heard the learned counsel appearing for the appellant and the learned Government Advocate appearing for the respondent.

8. The earliest document in this Case is the complaint given by P.W.1 who is none other than the paternal uncle of the deceased. It is the case of the prosecution that P.W.1 and P.W.2 were taking care of the deceased Gomathi after her father's demise. It is an undisputed fact that Pushpa, the mother of the deceased had eloped with some one deserting her husband. From P.W.1 and P.W.2's deposition, it is clear that these two witnesses were against Pushpa for reviving relationship with her daughter Gomathi.

9. In the said context, after the marriage of Gomathi, her mother Pushpa had tried to revive the contact. The appellant and his family members had prompted Gomathi to revive the relationship with her. Whether Gomathi was interested in the revival of the relationship with her mother or not could not be ascertained from the evidence of P.W.1, P.W.2, P.W.3 and P.W.4. However, from the evidence of P.W.1 and P.W.2, it is certain that as foster parents of Gomathi, they were not interested in the revival of relationship. In any event, this dispute cannot be a ground to prosecute the appellant alleging he abetted his wife to commit suicide. The RDO has conducted enquiry immediately after the death of Gomathi and he has not found any incriminating evidence to infer that the death was caused due to dowry harassment. The report of the RDO was marked as Ex.P.9 which is dated 06.03.2003. After recording the statement of P.W.1 and P.W.2, accused and others RDO has concluded that the death of Gomathi on 23.02.2003 is not due to dowry harassment.

10. Under such circumstances, to attract Section 306 IPC, against the appellant, there must be some strong substantial evidence to prove that he abetted Gomathi to commit suicide. When the prosecution case centers around the strained relationship with the deceased and her mother Pushpa, the appellant forced the deceased to revive the relationship for the sake of money, the said Pushpa ought to have been examined. The failure to examine Pushpa is a lapse to substantiate the veracity of the prosecution case. In the absence of substantial

evidence, the trial Court has held him guilty on the basis of the interested witnesses P.W.1 and P.W.2. It is unfortunate that the Trial Court has not properly discussed the contradictions and inconsistency between the statements of P.W.1 and P.W.2 to the RDO and the own complaint (Ex.P.1) and the deposition before the Court.

11. The prosecution evidence does not indicate that Gomathi committed suicide because the appellant forced her to talk with her mother. Even if it is to be held to be proved that he forced his wife to talk with her mother, if some person commits suicide for advising her to talk with her mother it will not amount to abetting suicide, without nexus between the act of suicide and the advice. In this case, there is no proximity or nexus on the part of the accused and the act of Gomathi committing suicide. Therefore, for want of proof, the accused is entitled to be acquitted.

12. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant in S.C.No.70 of 2007 dated 29.01.2010 by the learned Sessions Judge, Mahila Court, Salem is set aside. The appellant/accused acquitted of the charges. The bail bond, if any, executed by the appellant/accused shall stand cancelled. The fine amount, if any, paid by appellant/accused shall be refunded to him. The appellant is set at liberty unless, his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS III)

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msv

Sub Assistant Registrar

To

1. The Sessions Judge,  
Mahila Court, Salem
2. The Judicial Magistrate No.V,  
Salem.
3. The Chief Judicial Magistrate,  
Salem (for information)
4. The Inspector of Police,  
Kondalampatti Police Station,  
Salem.  
(Crime.No.316 of 2003)

5. The Superintendent,  
Central Prison,  
Salem.

6. The Public Prosecutor,  
High Court, Madras.

+1 cc to Mr.S.Swamidoss Manokaran, Advocate, S.R.No.18727

Criminal Appeal No.287 of 2012

VBA (CO)  
SSM(03/04/2019) .



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