

BAIL SLIP

The Appellant herein / Accused was directed to be released on bail as per order of this court dated 15/02/2012 made in CrI.M.P.No.1/2012 in CrI.A.No.40/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.40 of 2012

Elumalai,
S/o.Vadivel Gounder,
Mariamman Koil Street,
Kadagampattu, Vanur Taluk,
Villupuram District. ... Appellant/Accused

/versus/

State Represented by
Inspector of Police,
Vanur Police Station,
Villupuram District,
Crime No.147 of 2009 ... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 (2) of Cr.P.C, praying against the judgment of conviction by the learned Additional District & Session Judge, Fast Track Court No.1, Tindivanam in S.C.No.50 of 2011 dated 27.12.2011 convicting him for the alleged offence under Section 306 of the I.P.C, sentencing him to undergo 10 years R.I.

For Appellant : Mr.K.John Sathyan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (CrI.Side)

J U D G M E N T

Heard the learned counsel for the appellant and the learned Government Advocate (CrI.Side) for the respondent/state.

2. This is the case of suicide committed by one Jayalakshmi within 3 years of her marriage. She has committed suicide by self-immolation. The Revenue Divisional Officer, who

conducted the inquest has opined that the suicide was due to dowry harassment and cruelty meted by the deceased Jayalakshmi at the hands of her husband Elumalai, who is the appellant herein.

3. The case of the prosecution is that the deceased Jayalakshmi and the appellant Elumalai loved each other and married three years prior to the incident. The family of the deceased disapproved their marriage and from the date of marriage, there is no cordial relation between the deceased and her family members. While so, on 29.09.2009 at about 5.30 a.m, when PW.1 the brother of the deceased and PW.2 father of the deceased were working in the field, they heard that the deceased is laying burnt. PW.1 went there and saw his sister died charred. He went to police station gave the complaint Ex.P.1 to the police. After inquest conducted by RDO, which has indicated that Jayalakshmi committed suicide due to dowry demand and harassment, the accused was arrested and was tried for offences under Sections 498-A and 306 of I.P.C.

4. Before the trial Court, the prosecution has examined 11 witnesses, 12 Exhibits and 5 material objects were marked.

5. The trial Court, after considering the evidence let in by the prosecution has relied upon the report of the Revenue Divisional Officer who conducted the inquest. The opinion of the Revenue Divisional Office which is found in the report Ex.P.7 has been taken as basis proof for the charges. The trial Court has observed that immediately after occurrence, PW.7 has conducted enquiry and concluded that Jayalakshmi has been abated by her husband by giving mental torture and domestic harassment to commit suicide, by pouring kerosene on herself and setting fire. Correlating the opinion of the Revenue Divisional Officer found in Ex.P.7 and the post mortem certificate Ex.P.12, the trial Court has held the accused guilty of offence under Section 306 of I.P.C, sentence him to undergo 10 years R.I and acquitted him for offence under Section 498-A of I.P.C.

6. The learned counsel appearing for the appellant would first point out that there is no eye witness to the occurrence. The only witness who has spoken about the incident is PW.1 who is also the de facto complainant to set the criminal law in motion by giving statement to the police, which is marked as Ex.P.1. When there is no evidence to prove the guilt of the accused for offence under Section 498-A, and the trial Court having acquitted him for the said offence, he should have been acquitted for offence under Section 306 of I.P.C also.

7. The learned counsel appearing for the appellant would read the entire evidence of the prosecution witnesses and content that when there is no incriminating evidence against the appellant to indicate that the suicide of Jayalakshmi was due to the abetment of the accused, merely based on the opinion of Revenue Divisional Officer, the trial Court has concluded that the accused is guilty of offence under Section 306 of I.P.C.

8. The learned Government Advocate (Crl.Side) appearing for the respondent/state would fairly submit that there is no direct evidence to infer that the accused abated his wife Jayalakshmi to commit suicide. However, the attending circumstances would lead to an inference that but for the cruelty meted by her, there is no other reason for Jayalakshmi to commit suicide.

9. The learned Government Advocate (Crl.Side) would point that the deceased and the accused got married against the wishes of the deceased family members. Their marriage was a love marriage. Two children were born through the wedlock. In the said circumstances, the deceased has committed suicide by self-immolation. The brother of the deceased, after knowing the incident had given the complaint to the police expressing doubt about the death of his sister. This has led to registration of complaint and investigation. Since, the deceased Jayalakshmi had committed suicide, within 7 years of the marriage, the Revenue Divisional Officer has conducted inquest. During the inquest, the public living around the place had informed him about the dowry harassment and cruelty, which has led to the conclusion that the suicide was due to dowry harassment and physical torture meted at the hands of the accused. From the perusal of the records indicates that Jayalakshmi has committed suicide by self-immolation and it is not an homicide. The incident has occurred on 29.09.2009 at about 5.30 am in the morning. She was first found in a charred condition, by the villagers. Pazhani (PW.1) has gone to the spot, after hearing from the villagers'. He admits that, when he saw her sister, she was found completely burnt and also in the cross examination admits that, he gave a blank signed paper to the police and he is not aware what was written in the blank paper. While PW.1 evidence is not wholly reliable there is no other witness to support the case of the prosecution, which provide any incriminating material against the appellant.

10. The trial Court has strongly relied upon the report of Revenue Divisional Officer who was examined by the prosecution as PW.7. According to the information collected by him during the inquest, the deceased had no cordial relationship with her parents. Therefore, she was unable to tolerate the torture of

her husband (the appellant) who used to fight with her frequently. For this part of his report, the prosecution had not let in any evidence by examining near by residence, who have witnessed the alleged frequent quarrel.

11. As far as, offence for abetment is concerned, the proximity of the manner in which the abetment committed and the result should be established. In this case, there is total absence of material to implicate the accused in the suicide of Jayalakshmi. The suspicious circumstances against him is that they both were living together under one roof. On the day of suicide, Jayalakshmi has burnt herself and found died outside the house on a garbage. However, strong the suspicion is towards the accused, unless material evidence are available to prove and establish the suspicion it is not safe to hold guilty that he had abetted his wife to commit suicide. Further, it is unsafe to rely upon the uncorroborated version of the Revenue Divisional Officer, which itself is based on collection of information from third parties.

12. In the above said reason, this Court finds that the finding of the Court below is totally erroneous, without any legal basis. Hence, the Criminal Appeal is Allowed. The conviction and sentence passed by the trial Court is set aside. Fine amount paid if any, shall be refunded to the appellant. Bail bond executed shall stand discharged.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

bsm

Sub Assistant Registrar

To

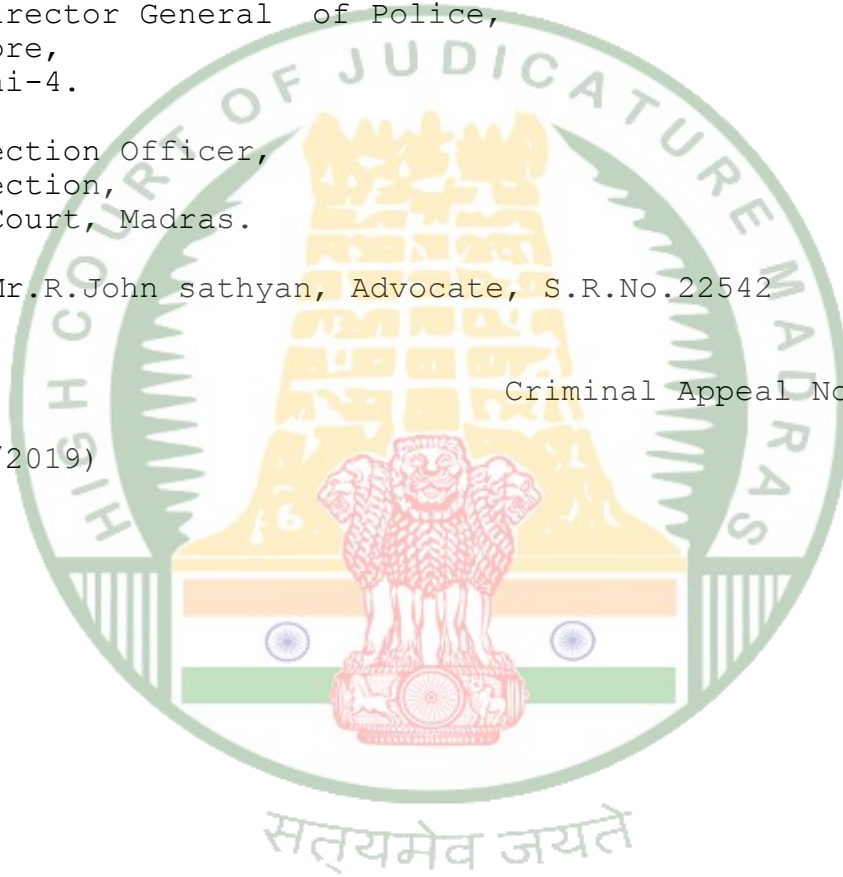
1. The Additional District & Session Judge,
Fast Track Court No.1,
Tindivanam.
2. The Judicial Magistrate,
Vanur
3. - do - through The Chief Judicial Magistrate,
Villupuram.

4. The Superintendent,
Central Prison,
Cuddalore.
5. The Public Prosecutor,
High Court, Madras.
6. The Inspector of Police,
Vanur Police Station,
Villupuram District.
7. The Director General of Police,
Mylapore,
Chennai-4.
8. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.R.John sathyan, Advocate, S.R.No.22542

Criminal Appeal No.40 of 2012

EV(CO)
SSM(16/04/2019)



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