

Bail Slip

The Petitioner/Accused namely Jilly @ Venkatesan, S/o.Perumal aged 20 years is directed to be released on bail as per order of this Court dated 23.02.2012 made in CrI.M.P.No.1 of 2011 in CrI.RC.1716 of 2011 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.No.1716 of 2011

Jilly @ Venkatesan ... Petitioner/Accused
Vs.

State Rep. by Inspector of Police,
Harur Police Station,
Dharmapuri District.
(Cr. No.1681 of 1999) ... Respondent/Complainant

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order dated 01.04.2010 in C.A.No.1 of 2010 on the file of the Court of Principal Sessions Judge, Dharmapuri.

For Petitioner : Mr.M.Govindaraju

For Respondent : Mrs.Kritika kamal.P
Government Advocate (CrI. side)

O R D E R

The Criminal Revision Case has been filed by the petitioner seeking to set aside the order in C.A.No.1 of 2010, passed by the learned Principal Sessions Judge, Dharmapuri., dated 01.04.2010.

2. Heard the learned counsel for the Revision petitioner and the learned Government Advocate (CrI. Side).

3. The case of the prosecution is that on 17.12.1999 at about 9 p.m near Kalladipatti junction, the Revision petitioner has forced his friend Amaravel to consume Pepsi drink in which he has discretely mixed pesticide. Amaravel unknowing about the mixture of pesticide in the drink had consumed and came to his house, immediately after taking Dosa, he vomitted. His parents

when enquired him, he has disclosed the accused offered him a drink, initially he refused, but was forced to take it by the accused. After consuming the drinks, he developed unconscious. Suspecting something wrong in the drinks consumed by Amaravel, PW2 Vadivel and PW3 Amirdham the parents of Amaravel had taken him to the nearby Primary Health Center. The Village Health Assistant has checked his pulse and referred him to the Government Hospital. Thereafter, Amaravel was taken to a Private Hospital for further treatment. He was discharged after few days on gaining conscious.

4. The Police has registered a case against the Revision petitioner for the offence under Section 307 I.P.C. Investigation revealed that the Revision petitioner and PW1 were working in a Book shop. There was some money dispute between them. Therefore, the Revision petitioner has mixed pesticide in the Pepsi drink and forced Amaravel to consume it with an intention to cause his death. Since Amaravel had vomited and taken to the Hospital, due to medication, he survived.

5. The accused was arrested and based on the confession statement, the pesticide and bottle used to mix the Pepsi with pesticide were recovered and forwarded to Chemical analysis. The report revealed that the mixture of Pepsi contained poisonous substance. The trial Court considering the circumstantial evidence and the chemical analysis report coupled with the confession leading to the recovery of the material objects has held the accused guilty under Section 307 I.P.C. convicted him to undergo seven years Rigorous Imprisonment and pay fine of Rs.1000/- in default six months Simple Imprisonment.

6. Aggrieved by the said conviction, the accused has preferred appeal before the Principal Sessions Court, Dharmapuri. The lower Appellate Court has re-appreciated the evidence and has confirmed the Judgment of the Trial Court.

7. Aggrieved by the concurrent finding of the Court below, the present Revision is preferred.

8. The learned counsel appearing for the petitioner / Accused would submit that PW1 who is the victim of the crime had enmity with the accused while they both were working in a Book shop. The Prosecution has not collected enough material to indicate that the alleged illness of PW1 was due to consumption of poison. The witnesses for the prosecution to prove that the accused and the victim were last seen together turned hostile. The person who alleged to have sold the pesticide to the accused did not support the case of the prosecution. The alleged motive that the accused and the victim had some money dispute has not been corroborated by any evidence. The recovery

of incriminating material objects based on the alleged confession of the accused is not been adequately corroborated through witnesses. PW8 Ayyavukounder was the witness to the observation Magazer and not for the recovery. PW2, PW3 and PW4 all are related to PW1 and their evidence is only hearsay and so to be rejected.

9. The learned Government Advocate appearing for the respondent in response to the above submission would submit that PW2, PW3 and PW4 have spoken about the immediate conduct of the victim and his utterance about the occurrence. Therefore, their evidence is admissible and reliable.

10. The learned Government Advocate also submitted that when PW1 returned home, he was found in a delirium state by his parents. He has vomited immediately after taking food. At that time he has informed PW2 and PW3 about the consumption of Pepsi drink given to him forcibly by the accused. Soon after PW1 was taken to the house of PW9 Dhanalakshmi who is the Village Health Assistant. She has deposed about state of body of the victim and advised PW2 and PW3 to take PW1 to the Government Hospital, Salem.

11. The victim PW1 was taken to private hospital. The Doctor who has treated him has deposed that PW1 was in an unconscious state with low pulse rate. After continuous treatment, he regained conscious and got discharged. The evidence of PW4 proves the previous acquittance of the accused with victim PW1 which is corroborated by the evidence of PW5.

12. Relying upon these evidence coupled with the recovery of poisonous drink based on the information given by the accused, the learned Government Advocate would submit that the circumstantial evidence placed before this Court clearly points the guilty to the accused and there is no alternate view could be drawn.

13. The learned counsel appearing for the Revision petitioner strongly relying upon in the absence of any medical record relating to the treatment of PW1 for consumption of poison and also would submit that hostility of PW7 and PW12 breaks the chain of events relied by the prosecution. To convict a person based upon the circumstantial evidence, the chain of events should be without any break. In the absence of proof for recovering of incriminating material and the last seen together, the Judgment of the Courts below has to be set aside.

14. This Court after giving due consideration to the rival submission would find that PW1 is the victim of the crime. He has returned home immediately after consumption of Pepsi

drink offered by the accused. PW3 Amirtham, mother of PW1 has deposed that on 17.12.1999 at about 9 p.m, PW1 came to house, had some Dosa but vomited immediately; when enquired, he told that the accused offered him Pepsi mixed with Bear and forced him to consume it. PW3 the father of the victim has corroborated the said portion. He has deposed that when PW1 came home, he was in semi conscious state. Immediately after taking two Dosa he vomited. when enquired, PW1 told that the accused offered him Pepsi. Since he scent chemical odour, he could not take the entire drink.

15. PW16 the Doctor has deposed that when PW1 was admitted in the hospital he was in unconscious state, the blood test revealed that the patient had consumed poison, hence he admitted him as impatient and treated him. The said blood report has not been collected by the investigating officer, however, the fact that the victim PW1 was admitted in the hospital for consumption of poison has spoken by PW16 stands unchallenged.

16. PW12 is the shopkeeper who was sold the pesticide to the accused, in his chief examination he has identified the accused. However, he cannot sustained his version in the cross examination. But that will not give a break in the chain of circumstantial evidence place by the prosecution. The evidence of PW1 that the drink offered by the accused scented chemical smell is the first incriminating suspicious material against the accused. The semi conscious state of PW1, when he reached home and vomiting after taking two Dosa are the other indications that what he has consumed is not palatable or digestible.

17. Subsequent sequence of the events are proved through PW2, PW3 and PW9. They take the chain of event without any break leading to the irresistible inference that the accused has administered something poisonous with an intention to eliminate PW1. The confession leading to recovery of remaining poison mixed drink, identification of the accused by the seller of the pesticide, though turned hostile during the cross examination provides a sufficient proof that the accused is guilty of offence under Section 307 I.P.C.

18. As far as the finding of conviction by the Courts below, this Court could not find any illegality or irregularity in the appreciation of evidence. Regarding the sentence, the Courts below has imposed 7 years R.I with a fine of Rs.1000/- in default 6 months S.I. For nonpayment of loan of Rs.1,000/-, quarrel has erupted between the accused and PW1. From the evidence, it appears that victim and the accused were school days friends working together in Venkateshwara Book shop at Batshapettai, Salem. At the time of occurrence, the age of the

accused was 20. Therefore, this Court modify the sentence to 4 years Rigorous imprisonment and a fine of Rs.1,000/- instead of 7 years Rigorous Imprisonment.

19. With the modification, the Criminal Revision petition is partly allowed. The respondent police is directed to secure the Revision petitioner/ accused and put him in prison undergo the remaining period of sentence. Any period of imprisonment undergone by the Revision petitioner/accused in this case shall be set of under Section 428 I.P.C.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge, Dharmapuri.
2. The Chief Judicial Magistrate, Dharmapuri.
3. The District Munsif cum Judicial Magistrate, Dharmapuri.
4. The Assistant Sessions Judge, Dharmapuri.
5. The Inspector of Police, Harur Police Station, Dharmapuri District.
6. The Public Prosecutor, High Court, Madras.
- 7.The Section Officer, Criminal Section, High Court, Madras.

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Cr1.R.C.No.1716 of 2011

NMI (CO)
GMY (09/04/2019)