

Bail Slip.

The Appellant herein/Accused viz Ganesan S/o. Arunachalam was released on bail as per order of this High Court, dated 30.04.2008 made in CrI.M.P.No.1/2008 in CrI.A.No.308 of 2008.0

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.10.2018
Pronounced on : 12.02.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.308 of 2008

Ganesan,
S/o.Arunachalam ... Appellant/Accused

Vs.

1.State Rep. By,
The Inspector of Police,
Vikkiramangalam Police Station,
Perambalur District.
[Crime No.1 of 2004]

2.Manivasagam,
S/o.Ayyakannu ... Respondent/Complainant

[Impleaded the 2nd respondent as per the order of this Court dated 28.06.2017 in CrI.M.P.No.5767 of 2017 in CrI.A.No.308 of 2008.]

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to call for the records and set-aside the conviction and sentence imposed in S.C.No.106 of 2007 dated 11.04.2008 by the Sessions Judge, Mahila Court, Perambalur.

For Appellant : Mr.K.Gandhi Kumar
For 1st respondent: Mrs.V.Saratha Devi,
Government Advocate [CrI.Side]

For 2nd respondent : No appearance

J U D G M E N T

This Criminal Appeal filed to set aside the Judgment dated 11.04.2008, made in S.C.No.106 of 2007 on the file of the Sessions Judge, Mahila Court, Perambalur.

2.The appellant is the sole accused in S.C.No.106 of 2007 and he has been charged for an offence under Section 306 of IPC. The trial Court had found the appellant guilty of the offence punishable under Section 306 of IPC and convicted and sentenced him to undergo five years Rigorous Imprisonment and imposed to pay a fine amount of Rs.1,500/- (Rupees one thousand five hundred only) in default to undergo ten months Rigorous Imprisonment.

3.The prosecution in this case had examined PW1 to PW16 and marked exhibits Ex.P1 to P13 and one M.O.1. On defence side, the appellant had examined three witnesses DW1 to DW3 and marked exhibits Ex.D1 to Ex.D4.

4.The case of the prosecution is that the deceased Saratha is a mother of three children and her husband worked in a Tea shop at Chennai and he visits his village only during the festival time and other occasions, leaving his wife and children to be taken care by his parents. The appellant/accused worked as a Village Assistant at Kadambur village. On 31.12.2003, at about 09.30 a.m at Matha Kovil Street, Gunamangalam Village, the appellant/accused had threatened the deceased Saradha by showing the love letters written by her to her neighbour one Vivekanandhan in the presence of said Vivekanandhan and his mother, father-in-law and mother-in-law of the deceased Saratha in public and the appellant/accused compelled her to have Sexual intercourse with him, failing which, the appellant/accused would disclose the said letter to the villagers and also by printing posters and exhibiting it throughout the village. The deceased Saratha got frustrated and fearing exposure and unable to bear this, at about 12.00 noon on the same day, she committed suicide by hanging herself with her saree in a black babul tree at Gunamangalam village and ended her life. Hence, the appellant/accused had abetted the death of said Saratha. Therefore, an FIR in Crime No.1 of 2004 came to be registered by the Vikramangalam Police against the appellant/accused and charge sheet was filed, taken on file by the learned Judicial Magistrate, Ariyalur in P.R.C.No.34 of 2006 and the learned Magistrate committed the case for trial before the Court of Sessions at Perambalur in S.C.No.106 of 2007.

5.The prosecution, to prove the case had examined PW.1 to PW.16 and marked Ex.P1 to Ex.P13 and M.O.1, material object is the saree used by the deceased to hang herself.

6.PW1-Manivasagam is the husband, PW2-Ramalingam is the father and PW3-Sivagami is the mother of the deceased Saratha. PW4- Kaliyammal and PW5-Iyyakannu are the father-in-law and mother-in-law of the deceased Saratha. PW6-Savithiri is the neighbour and PW7-Vivekanandhan is her son. PW8-Rajayoham, PW9-Marimuthu and PW10-Muthu are the neighbours of the deceased

Saratha. PW11-Venu and PW13-Karunamoorthy are other neighbours, who have witnessed to the Seizure Mahazar and PW12-Balasubramaniyan is the Doctor attached to the Government Hospital, Ariyalur, who issued the Post-mortem report. PW14-Chandrakasan, the Sub-Inspector of Police, Vikramangalam Police Station, who had registered the case. PW15-Natarajan is the Inspector of Police, Udayarpalayam, who filed the charge sheet and PW16-Pughazhendhi, is the Inspector of Police, Udayarpalayam, who had taken up further investigation.

7. The prosecution side exhibits are Ex.P1 the complaint given by PW1. Ex.P2 is the Observation Mahazar. Ex.P3 is the Signature of PW11 found in the Seizure Mahazar. Ex.P4 is the post-mortem certificate issued by the PW12 Doctor. Ex.P5, is the Toxicology report. Ex.P6 is the signature of PW13 found in the Observation Mahazar. Ex.P7 is the Seizure Mahazar. Ex.P8 is the printed FIR in Crime No.1 of 2004 of the Vikramangalam Police Station. Ex.P9 is the rough sketch of the place of occurrence. Ex.P10 is the rough sketch of the deceased house. Ex.P11 is the alteration report submitted by PW14. Ex.P12 is the Inquest report. Ex.P13 is the xerox copy of the document containing the signature of the appellant/accused.

8. The defence, to prove the case had examined DW.1 to DW.3 and marked Ex.D1 to Ex.D4.

9. The defence witnesses are DW1 who is the appellant/accused himself. DW2-Kavitha, is the elder sister of the deceased Saratha and DW3-Chinnadurai is a villager of Gunamangalam village.

10. The exhibits, which have been marked on the side of the defence are Ex.D1 copy of a petition dated 15.03.2003 given by DW1 to police. Ex.D2 is the photo copy of the FIR dated 09.01.2006, complaint given by the appellant/accused against PW1 and one Subramaniyan. DW3 is the letter dated 15.7.2006 written by DW2 to appellant/accused. DW4 is the Certified copy of Ex.D2.

11. The contention of the learned counsel for the appellant is that the appellant did not commit any offence as alleged by the prosecution and he is not the abettor of the deceased Saratha who had committed suicide and he neither showed any love letter said to have been written by the deceased Saratha nor forced and threatened the deceased for physical relationship. Further, the cause of death of the deceased is said to be due to exhibiting the love letters and the entire case proceeds on the basis of these letters, but the same have not been seized and produced in the above case. Hence, the non-production of the said letters is fatal to the case of the prosecution. The learned counsel would further submit that there have been strong motive of the Gunamangalam villagers to foist a

case against the appellant since, the appellant was taking stringent action against the encroachers and wrong doer's of the village. In support of the same, the appellant had produced Ex.D1, wherein he had given complaint on 14.03.2003 against one Manogaran and Chinnadhurai for obstructing the villagers, watching public Television and also against the villager One Subramani @ Manoharan for cutting down the neem tree. Based on such motive, the villagers have implicated the appellant being the cause of death of the deceased.

12. Further, he contended that, the manner in which the case came to be registered and the investigation carried out would show that there has been enormous delay in registration of the case and forwarding the statements and documents to the Court. Hence, there was every possibility that the case is an afterthought projected by the witnesses against the appellant. Further, he submitted that there have been contradictions in the statement of witnesses, about the time and the manner in which the investigation has been carried out, even, before the receipt of the complaint. On 31.12.2003 at about 09.00 p.m, the respondent Police was present in the village and further PW1 to PW5 are all close relatives and other witnesses are their neighbours, who have falsely implicated the appellant in this case. It is seen that the FIR dated 01.01.2004 had been marked as Ex.P8 and it had been sent to the Tahsildar on 05.01.2004 and there is no witnesses examined from the revenue to show what had happened with investigation under Section 174 of Cr.P.C conducted by them and the FIR had reached the Court below much later. Further, in the post-mortem report Ex.P4, the date is mentioned in the FIR page one as 01.01.2004 and on the second page, PW12-Doctor submitted his opinion on 21.07.2004, which is a carbon copy. The case of the appellant is that the deceased had committed suicide only due to exposure of her illicit relationship with PW7, which was objected by her mother PW3, who had quarrelled with the deceased in Public on the fateful day, in presence of deceased in-laws and villagers, which abetted suicide of the deceased. Immediately, after the occurrence, PW6 and PW7 had left the village, since they were the reason for the death of deceased. Therefore, the appellant is not responsible for the cause of Saratha's death.

13. Further, the appellant examining himself as DW1, had deposed and had given detailed explanation about the manner in which the occurrence could have taken place and he had marked Ex.D1, the complaint being the motive for the implication and also marked Ex.D2, FIR dated 11.01.2006 for the attack by PW1 and one Subramanian and the said FIR came to be registered, when the appellant was taking treatment as in-patient at Government Hospital. He further contended that, DW2 is none other than the own sister of the deceased and daughter of PW2 and PW3, who had given true version about the death of her sister Saratha and

about the appellant being falsely implicated in this case. He further contended that DW3, who is the villager, had spoken about the occurrence to corroborate Ex.D1. Thus the appellant had contended that he has been falsely implicated and the Court below had failed to look into these aspects and also on the intersee contradictions in the evidence of the witnesses mainly PW1 to PW7 and on the evidence of PW9 to PW11 and had wrongly convicted the appellant.

14. The contention of the prosecution is that in this case on receipt of the complaint from PW1, a case was registered and investigation was conducted. PW1 to PW3 are the husband, father and mother of the deceased and PW4 & PW5 are the mother-in-law and father-in-law of the deceased, who have categorically stated about the appellant trailing on the deceased for sexual relationship with her for several months. Further, PW6 and PW7 had categorically stated about the appellant making false allegations against PW7 with the deceased and hence, a quarrel had taken place on the fateful day, with regard to the same. PW8 and PW9 are the neighbours, who have witnessed the fight. PW11 and PW13 are the witnesses for Observation mahazar and the Seizure mahazar and they have all supported the case of the prosecution. PW12 is the Doctor, who issued Post-mortem report Ex.P4 and opined that the deceased had died by Asphyxia and due to hanging. PW14 is the Sub-Inspector of Police, who had received complaint Ex.P1 and registered an FIR in Cr.No.1 of 2004 as Ex.P8 and thereafter visited the scene of occurrence and prepared Observation mahazar and rough sketches and also examined witnesses and thereafter, altered the case under Section 306 of IPC and also submitted alteration report Ex.P11 dated 24.01.2004. PW16 is the Investigation officer, who had taken up investigation from PW14, who had examined all witnesses and recorded the statement and collected the documents and materials objects and shown to the doctor and after examining the post-mortem report, he had finalised the charge sheet, since he was transferred PW15, filed the final report.

15. The witnesses have categorically spoken about the role of the appellant and the Court below had analysed all the evidence and documents in this case to come to a conclusion to convict the appellant.

16. This Court has considered the rival submissions and perused all the materials and records placed before this Court. PW1, who is the husband of the deceased had clearly stated in the complaint that, ten days prior to the date of occurrence, the deceased had contacted him and stated about the harassment caused by the appellant, for which PW1 replied that he would be coming for pongal festival and at that time he would question the appellant with regard to the harassment. Unfortunately, even before that on 31.12.2003, the deceased hung herself unable to bear harassment caused by the appellant and the appellant is the

reason for his wife's death. It is seen from the evidence of PW2 and PW3, that they were also informed about the harassment of the appellant six to seven months prior to the date of occurrence and they did not inform the same to PW1, since it would affect the cordial matrimonial life of PW1 and deceased and they were restrained to approach the police for the same reason. On analysing the evidence, it is seen that these witnesses are natural.

17. It could be seen that the appellant/accused had been constantly trailing with evil mind to have sexual relationship with the deceased. Further, PW4 and PW5 on their evidence, have categorically stated about the appellant following the deceased, wherever she was going for fulfilment of his lust. Further, the deceased handed over her three children to them and she had left the house in a frustrated mood stating that she would end her life. Further, the appellant had picked up a quarrel with the deceased making false allegations that, she was having relationship with PW7 Vivekanandhan, PW6, who is the mother of PW7 had denied such relationship and in fact the deceased is the maternal aunt to PW7 and he, helped her elder son of the deceased to go school and this was also blown out of proportion by the appellant and was making false and wild allegations against the deceased. PW8 and PW9, who were the neighbours of the deceased had categorically stated about the appellant quarrelling with the deceased and making uncharitable allegations against her on the fateful day immediately before her suicide.

18. From the above evidence of PW1 to PW9, it is categorically proved that the activities of the appellant drove the deceased to commit suicide. PW12, Post-mortem doctor had confirmed that the death was due to hanging. PW11 and PW13 are the mahazar witnesses, who have stated about the mahazar prepared in the scene of occurrence. PW14, PW15 and PW16 are the investigation officers stated about the investigation being carried out. There might be some delay in sending the statement and documents to the trial Court, which alone would not prove the prosecution's case to be fatal. Further the fault of the investigating officer should not be the reason for denial of Justice. The witnesses are rustic villagers, wherein their would be some natural contradictions. These contradictions would only go to prove that their evidence are natural and truthful. The lower Court had given a well reasoned finding and Judgment.

19. In view of the same, this Court finds that there is no reason to interfere with the Judgment passed by the learned Sessions Judge, Mahila Court, Perambalur in S.C.No.106 of 2007 and the Court below is directed to take appropriate steps to secure the appellant to undergo his remaining period of sentence, if he is in outside.

20. Hence, the finding of the Court below is confirmed. In the result, this Criminal Appeal stands dismissed. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

vv2

To

1. The Sessions Judge,
Mahila Court, Perambalur.

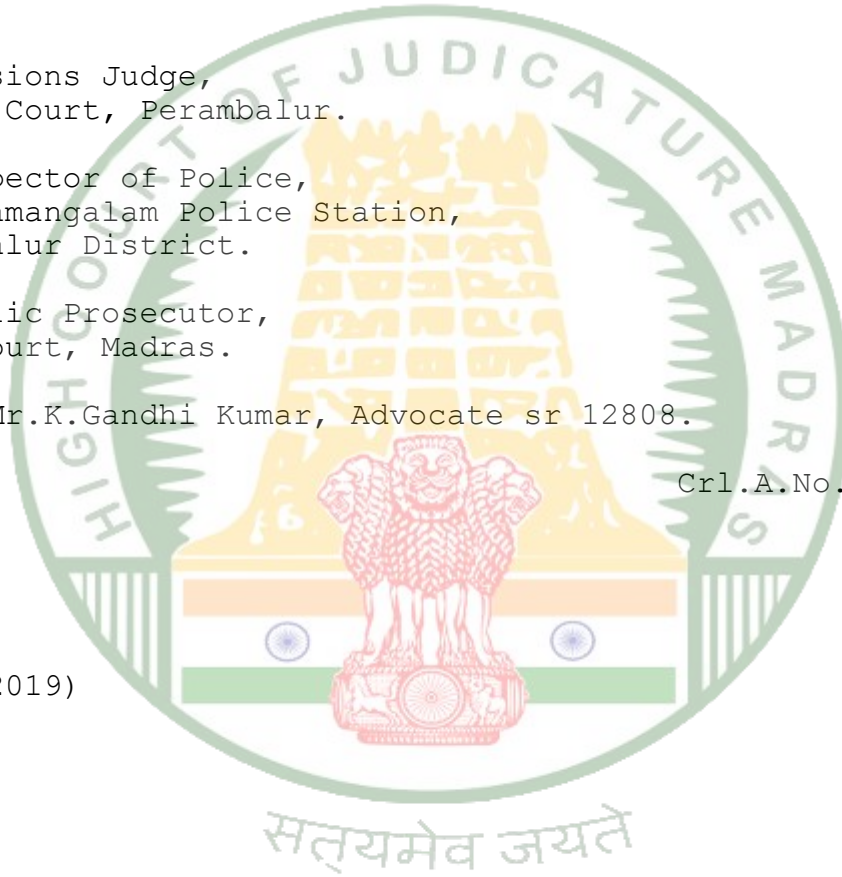
2. The Inspector of Police,
Vikkiramangalam Police Station,
Perambalur District.

3. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr. K. Gandhi Kumar, Advocate sr 12808.

Cr1.A.No.308 of 2008

MR (CO)
SP (27/03/2019)



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