

Bail Slip

The Appellants/Accused A1, A2, A3 namely 1.Tamizhvanan S/o.Vadivel, 2.Vadivel S/o.Vairakannu, 3.Kamala D/o.Vadivel are released on bail on 31.07.2014 in MP 1 of 2014 in Crl. A.396 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.396 of 2014

1.Tamizhvanan

2.Vadivel

3.Kamala

... Appellants/Accused

vs

State by

Inspector of Police,

Valivalam Police Station,

Nagapattinam District.

(Crime No.36 of 2009)

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Code of Criminal Procedure, against the conviction and sentence passed in S.C.No.85 of 2012 dated 09.07.2014, by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, and seeks to set aside the same.

For Appellants : Mr.M.K.Subramanian

For Respondent : Mr.T.Shanmugarajeswaran

Government Advocate (Crl.Side)

JUDGMENT

The respondent police registered a case against the appellants/accused for the offence under Section 306 IPC. After investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No-1, Nagapattinam, for the offence under Section 306 IPC. The learned Judicial Magistrate No-1, Nagapattinam, taken the charge sheet on file in P.R.C.No.20 of 2012, since the offence is exclusively triable by the Court of Sessions committed the same to the learned Principal District and Sessions Judge, and was taken on file in S.C.No.58 of 2012 and the same was made over to the Mahila Court, (Fast Track Court), Nagapattinam, The learned Sessions Judge, Mahila Court, (Fast Track Court), Nagapattinam, after

completing the legal formalities framed charges against the appellants for the offence under Section 306 IPC.

2 During trial, in order to prove the case of the prosecution as many as 12 witnesses were examined and 13 documents were marked besides six material objects. After completing the evidence of the prosecution, when incriminating circumstances culled out from the prosecution witnesses were put before the appellants, they denied as false. On the side of the defence, no oral and documentary evidence was produced.

3 The learned Sessions Judge, Mahila Court, (Fast Track Court), Nagapattinam, after completing trial and after hearing the arguments on either side and also perusing the entire records come to the conclusion that the appellants have committed the offence under Section 306 IPC and sentenced them to undergo 2 years Rigorous Imprisonment each and to pay a fine of Rs.1,000/- each, in default, to undergo three months each Simple Imprisonment.

4 Challenging the said judgment of conviction passed by the learned Sessions Judge, Mahila Court, (Fast Track Court), Nagapattinam, in S.C.No.85 of 2012, the convicts have preferred the present criminal appeal before this Court. During pendency of the appeal, the second appellant died and memo has also filed to that effect. Therefore, this Court vide order dated 26.06.2019, dismissed the appeal against the second appellant as abated.

5 The learned counsel for the appellants would submit that the witnesses have not supported the case of the prosecution. The trial Court relied on the dying declaration recorded from the victim and also the statement recorded by the Inspector of Police from the victim. Further, even, the relatives of the victim have also not supported the case of the prosecution. Though, the Magistrate recorded the statement and dying declaration, but, the doctor one who certified the dying declaration has not been examined before Court below, even sufficient opportunity was not given for cross examination, as to whether, the deceased was in sound mental state of mind at the time of giving dying declaration. Further, P.W.12 recorded the dying declaration at 12.40 p.m., on 12.02.2009, and P.W.9 the Sub Inspector of Police recorded the statement Ex.P13, in that statement there is a contradiction between the dying declaration made by the victim before P.W.12 and the Sub Inspector of Police. It is unsafe to convict the accused relied on the dying declaration without any corroboration. As per the evidence of P.W.1 to P.W.3, A1 married with the victim and they got a male child and also there is no harassment. In Ex.P13, the statement recorded by the Sub- Inspector of Police it was stated that the

P.W.3 only informed the victim that second marriage was arranged for her husband therefore, due to frustration the victim poured kerosene on her body and set fire on her own, P.W.3 has not supported the case of the prosecution. The learned counsel placed reliance the judgments of the Hon'ble Supreme Court in the case of Mahendra Singh and Another Vs. State of M.P. reported in 1995 SCC 731, in the case of Ramesh Kumar Vs. State of Chhattisgarh reported in (2001) 9 SCC 618 and in the case of Poonam Bai Vs. State of Chhattisgarh reported in 2019 SCC 623. Therefore, in the present case, the prosecution has miserably failed to prove that the appellants only induced the victim to commit suicide. Therefore, in this case, the prosecution has failed to prove its case beyond all reasonable doubt. The trial Court failed to consider all these facts and erroneously convicted the appellants, which warrants interference by this Court.

6 The learned Government Advocate (Criminal Side) for the respondent would submit that the prosecution has proved its case beyond reasonable doubt. A1 is the neighbour of the victim and he developed the intimacy with her, due to the illegal intimacy the victim girl got conceived. Subsequently, A1 refused to marry her. A2 and A3 also not permitted the A1 to marry the victim girl. Even the victim girl gave a complaint before the All Women Police Station, Nagapattinam in the year of 2006. After registering the case, A1 refused to marry the victim. Subsequently, she gave birth to a male child on 20.12.2009, therefore, she came to know that the appellants are arranging marriage for A1 with some other girl, therefore, the victim committed suicide. The dying declaration Ex.P12 was recorded by P.W.12/Judicial Magistrate No-I, Nagapattinam and she also gave the statement before the Superintendent of Police Ex.P13. On reading of the Ex.P12 and Ex.P13, it reveal that victim herself has stated that A1 rapped her and subsequently he failed to marry her and she also gave birth to one male child. Subsequent to that all the appellants have arranged marriage for the first appellant with another girl. Hence, the victim poures kerosene on her body and committed suicide. The prosecution has proved its case beyond any reasonable doubt, which does not warrant any interference by 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 that A1 and victim both are residing in the same village and both had developed love affairs and they had physical relationship and A1 promised to marry her and the victim got conceived. Subsequent to that, all the appellants have refused to conduct marriage of

the victim with A1. The victim girl gave birth to one male child. But the appellants one and two made arrangement for the marriage of A1 with another girl. The said fact was come to know by the victim girl and hence, on 12.02.2009 at about 01.00 P.M., she poured Kerosene on her body and set fire on her and subsequently died and therefore, case was registered against all the appellants for the offence under Section 306 IPC.

9 P.W.1 to P.W.3 are the relatives of the victim, since the victim's parents are no more, she was brought up by P.W.1, P.W.2 and P.W.3. They have stated that the victim got already married with A1. Later, the victim heard the news about the second marriage of A1 and due to the depression, she committed suicide that means the relatives of the victim are not supported the case of the prosecution. When the victim was admitted in the hospital, the hospital authorities have intimated the same to the respondent police and P.W.12/Judicial Magistrate No-I, Nagapattinam came to the hospital in which the victim was taking treatment on 12.02.2009 at about 02.40 P.M., and recorded the dying declaration from the victim and subsequently on the same date at about 04.30 P.M., the Sub-Inspector of Police also recorded the statement from the victim Ex.P14, which are clearly proved that the victim committed suicide, since A1 refused her.

10 The trial Court after carefully considering the evidences adduced by the prosecution witnesses, has convicted the appellants and this Court does not find any valid reason to interfere with the judgment of conviction made by the trial Court.

11 In the result, the Criminal Revision Case is dismissed as devoid of merit and substance the trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

1.The learned District and Sessions Judge,
Fast Track Mahila Court,
Nagapattinam.

2.Inspector of Police,
Valivalam Police Station,
Nagapattinam District.

3.The Superintendent of Central Prison,
Cuddalore.

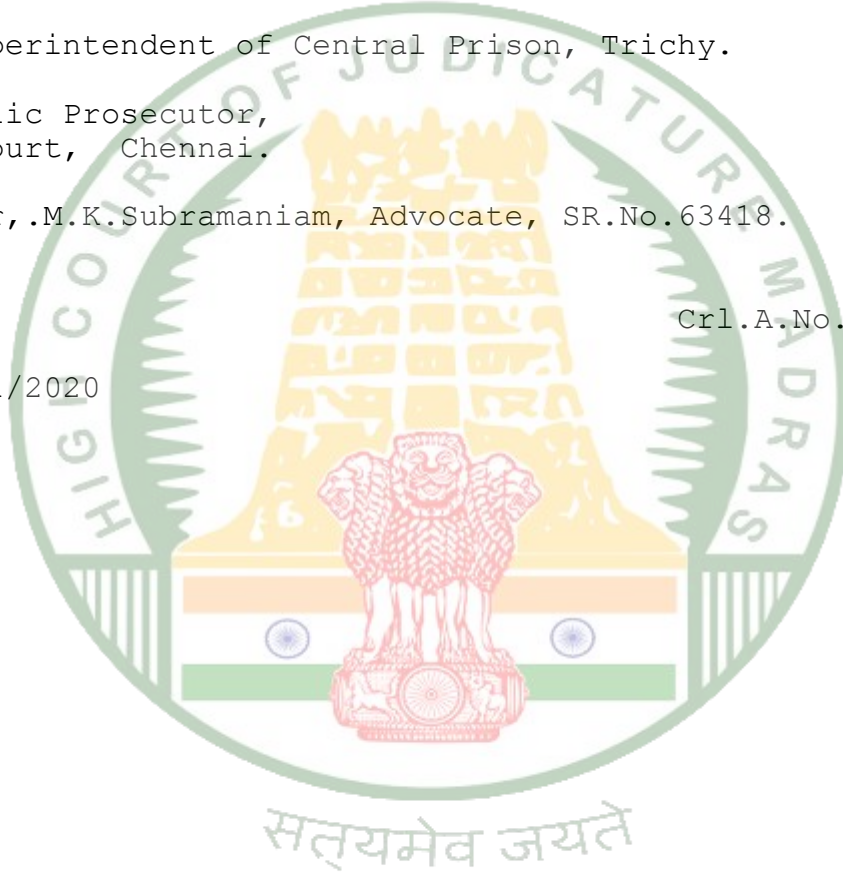
4. The Superintendent of Central Prison, Trichy.

5.The Public Prosecutor,
High Court, Chennai.

+1Cc to Mr,.M.K.Subramaniam, Advocate, SR.No.63418.

Cr1.A.No.396 of 2014

PVS (CO)
CSR: 27/01/2020



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