

BAIL SLIP

The Appellant/Accused namely (1) Natarajan, S/o. Thangavelu and (2) Jeevarani W/o Natarajan was released on bail vide Order dated 19.09.2014 made in Crl.Mp.No. 1/14 in Crl.A.No. 488/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.488 of 2014

1. Natarajan
2. Jeevarani

... Appellants/Accused

vs.

The state rep. by
The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam.
(Crime No.104 of 2011)

... Respondent/Complainant

The Criminal Appeal has been filed under Section 374(2) of Cr.P.C, to set aside the conviction and sentence imposed upon the appellants by the Fast Track Mahila Court, Nagapattinam, dated 27.08.2014 in S.C.No.145 of 2013.

For Appellants : M/s.Greetha Senthilkumar

For Respondent : Mr.T.Shanmugarajeswaran

Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction made by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, in S.C.No.145 of 2013 dated 27.08.2014.

2 Case of the prosecution is that the appellants/accused had scolded the deceased, who was came on bail in theft of Goat case, stating that "you only theft our Goat, instead of doing this you can send your daughter for prostitution". On hearing the words uttered by the appellants/accused, the deceased went to house and locked the door and poured kerosene and set fire on her own. Therefore respondent police registered a case against the appellants for the offence under Sections 306 and 506(i) of

IPC and after investigation laid a charge sheet before the learned Judicial Magistrate I, Nagapattinam and the same was taken on file in P.R.C.No.44 of 2013 and since the offence charged against the appellants was triable only by the Court of Sessions, the case was committed to the learned Principal Sessions Judge, Nagapattinam, and the same was made over to the learned Assistant Sessions Judge, Nagapattinam, and since, the offence is against women, the case was transferred to the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, in S.C.No.145 of 2013 for disposal.

3 Before the trial Court, in order to prove the case of the prosecution, P.Ws.1 to 11 were examined and Exs.P1 to 10 were marked. After completing evidence of prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses were put before the appellants/accused, they denied as false. On the side of the defence, no oral and documentary evidence was adduced.

4 The trial Court, after trial found the appellants/accused guilty of offence punishable under Section 306 and 506(i) of IPC and by judgment dated 27.08.2014, convicted and sentenced them to undergo rigorous imprisonment for a period of two years each with fine of Rs.1000/- each, in default, to undergo simple imprisonment for a period of six months for the offence under Section 306 of IPC and imposed fine of Rs.500/- each, in default, to undergo simple imprisonment for a period of three months for the offence under Section 506(i) of IPC. Aggrieved against the said judgment of conviction, the accused have filed this criminal appeal before this Court.

5 According to learned counsel appearing for the appellants/accused, there are contradictions in the evidence of prosecution witnesses. As per dying declaration recorded from the deceased Ex.P10, five persons, who belong to Tata Nagar, came and scolded the deceased stating that "you only stolen the Goat and instead of doing so, you can send your daughter for prostitution and earn money" and the deceased since could not bear the insult, had poured kerosene on her and set fire. But the appellants, are belong to Sevabharathi Nagar, not Tata Nagar as stated by the deceased in the dying declaration. Therefore it is clear that one another group of people, belong to Tata Nagar came and reprimanded the deceased and Further it was stated that five persons came, but prosecution has failed to investigate, who are the other persons. There are contradictions in the evidence of prosecution witnesses i.e. P.Ws.1 to 3 and also it contradicts with the dying declaration Ex.P10. When two views are possible, the view which favours the accused should be taken into consideration. The Court below had failed to consider the evidence of prosecution witnesses, which failed to prove its

case beyond reasonable doubt and erroneously convicted the appellants, which warrants serious interference.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the deceased was already arrested and released on bail in a case of Goat theft. The appellants reprimanded the deceased stating that "you only stolen our Goat, instead of doing this you can send your daughter for prostitution and earn money". On hearing the words uttered by the appellants/accused, the deceased immediately went to the house and locked the door and poured kerosene and set fire on her own. Therefore the appellants committed offence under Section 306 and 506(i) of IPC. P.W.1, who is daughter of the deceased and also eye witness to the occurrence, has clearly spoken about the occurrence and clearly identified the appellants/accused and her evidence was corroborated with the evidence of P.Ws.2 & 3, who are neighbours. Prosecution has proved its case beyond reasonable doubt and the trial Court has also by rightly appreciating the evidence of prosecution witnesses, convicted the appellants and there is no reason to interfere with the same.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 P.W.1 is daughter of the deceased, P.Ws.2 & 3 are neighbours. P.W.1 has stated that on 22.02.2011 at about 2.30 p.m. when she and her mother the deceased were in the house, appellants came and reprimanded the deceased saying that "you only stolen the Goat, instead of doing this, you can send your daughter for prostitution and earn money" and after hearing the words uttered by the appellants, the deceased went to house and locked the door. P.W.1 had quarreled with the appellants. The deceased poured kerosene and set fire on her own and immediately P.W.1 to P.W.4 had broken the door and admitted the deceased in the Hospital and P.W.11, the Judicial Magistrate No.II, Nagapattinam, recorded dying declaration of the deceased in the presence of the Doctor P.W.7, after obtaining certificate Ex.P4 and subsequently she died. In the dying declaration, Ex.P10, the deceased has stated that five persons came by auto, who belongs to Tata Nagar and scolded her saying that you only stolen the Goat, instead of doing so, you can send your daughter for prostitution and ear money, and since she could not bear the insult, she poured kerosene and se fire. The evidence of P.W.1 would show that two persons came and shouted at her mother and therefore it creates doubts in the mind of the Court, whether two persons or five persons and who actually scolded the deceased. In the dying declaration, deceased has stated that five persons, who belongs to Tata Nagar came and all the five had shouted at her and questioned about the Goat and in the

dying declaration, the deceased did not mention any specific name, who uttered the words, which insisted her to commit suicide and also it is to be noted that the deceased has stated that the five persons came by Auto and they belong to Tata Nagar, whereas, prosecution has stated that the appellants belong to Sevabharathi Nagar. Even assuming that as per P.W.1 the appellants only came to the house, whether the words uttered by the appellants amount to abutments. Prosecution has not investigated that the Goat belongs to whom and who stolen the Goat. Admittedly a case was registered against the deceased for stealing of Goat and deceased came out on bail. P.W.1 has clearly stated that the appellants came and shouted, but, the deceased did not state any named person and she stated that only five persons came, but however, she died. Now this Court has to see that whether the words uttered by the appellants, as per the prosecution, amount to abutment.

9 On reading of the entire materials and also the dying declaration, it reveal that deceased stated that only five persons came and asked "did you steel the Goat and instead of doing so, you can send your daughter for prostitution and earn money". According to the deceased the above words only driven her to take such a decision. Admittedly, a case was already registered against the deceased for Goat theft and the same is pending for investigation. It is common that a person, who lost his properties, will certainly raise a question against the person, who seems to be the reason for the same. Like wise, even assuming that the appellants only came and shouted, the appellants also asked that "did you steel the Goat instead of doing so you can send your daughter for prostitution. It is true that the accused used unparliamentary words, but for which the deceased would have lodged a complaint before the police, when already a case was pending, or else waited for the result of the case. In the dying declaration, it has not been stated that the appellants threatened her and driven to commit suicide or insisted her to do so. It was simply stated that five persons came, who belong to Tata Nagar and shouted at her. This Court is of the view that there are no ingredients to attract Section 306 and prosecution has failed to prove its case beyond reasonable doubt. The trial Court has also failed to appreciate the evidence in a proposer manner and convicted the appellants, which warrants interference of this Court. Hence this Court is inclined to set aside the conviction imposed on the appellants.

10 Accordingly, the criminal appeal is allowed and the judgment of conviction dated 27.08.2014 in S.C.No.145 of 2013 by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, is hereby set aside and the appellants are hereby acquitted from all the charges levelled against them in Cr.No.104 of 2011. The fine amount, if any paid by the

appellants shall be refunded to them and bail bond, if any, executed by the them shall stand cancelled.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Nagapattinam.
- 2.The Principal Sessions Judge,
Nagapattinam.
3. The Judicial Magistrate No.I,
Nagapattinam.
4. Thro The Chief Judicial Magistrate,
Nagapattinam.
5. The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam.
6. The Public Prosecutor,
High Court, Madras.

Copy TO

The Section Officer,
Criminal Section Records,
High Court, Madras.

+1cc to Mr.T.P.Senthil Kumar, Advocate, S.R.No.59533

Cr1.A.No.488 of 2014

RSI (CO)
GN(09/10/2019)