



Bail Slip

The Appellant/Accused Namely Vijaya W/o Mani @ Allimuthu was directed to be released on bail vide order dated 10.4.2018 made in CrI.M.P No.5655 of 2018 in CrI A No.257 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.257 of 2017

Vijaya
W/o Mani @ Allimuthu ... Appellant/Sole Accused

Vs

State rep., by
The Inspector of Police,
Mangalapuram Police Station,
Namakkal District.
(Crime No.410 of 2012) ... Respondent /Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence by judgment dated 27.04.2017 in S.C.No.89 of 2014 on the file of the Principal Sessions Judge, Namakkal.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.R.Ravichandran
Government Advocate (Criminal Side)

O R D E R

This present Criminal Appeal has been filed to set aside the conviction and sentence by judgment dated 27.04.2017 in S.C.No.89 of 2014 on the file of the Principal Sessions Judge, Namakkal.

The case of the prosecution :

2 The defacto complainant Mani @ Allimuthu is the husband of the accused Vijaya and father of the deceased baby Kanishka, residing at Arjunapadaiyachithottam, Easwarmoorthipalayam, Rasipuram Taluk within Jurisdiction limits of Mangalapuram PS. The complainant got married with the accused 2 years back and



got a female child named Kanishka, and lived jointly, with his father and mother. On 09.10.2012 the complainant came to house after his work he saw that the accused had prepared insufficient food, when the complainant questioned the same, there was a quarrel between the husband and wife. Due to the quarrel the wife/accused became wild and provoked because of her husband's scoldings and developed her mind to commit suicide and to murder her 1 ½ years daughter. Immediately the baby became unconscious and was taken to Vinayaga Mission Hospital, Salem. Where it was reported that the child was dead due to the poisoning of "Cleistanthus Collinus" i.e., Odeuvanthalai on 13.10.2012 and thereby the accused had committed an offence punishable under Section 302 of IPC. In continuance of the same, the accused knowingly and intentionally, attempted to commit suicide, and consumed the 'Oduvanthalai Juice' which is highly poisonous, likely to cause death. Under such circumstances the accused had attempted to commit suicide by consuming the Oduvanthalai Juice, and thereby had committed an offence punishable under Section 309 of IPC. Thereafter, a case was registered against the accused by the police under Section 302 and also 306 of IPC., for committing suicide. After investigation, the police registered the FIR and filed a charge sheet.

3 During the trial in order to prove the case of the prosecution 14 witnesses were examined and 23 documents were marked. After completion of the prosecution witnesses incriminating circumstances were culled out from the prosecution witnesses and the accused denied as false. Thereafter, no oral and documentary evidence were produced on behalf of the defence.

4 The learned Principal Sessions Judge, Namakkal, after considering the materials, accused found guilty for the offence under Section 304(1) and 309 of IPC., and convicted the accused for the offence under Section 304(1) of IPC and sentenced to undergo Imprisonment for one year and imposed fine for a sum of Rs.5,000/- in default of payment of fine to undergo imprisonment for three months, for the offence under Section 309 of IPC and sentenced to undergo Simple Imprisonment for six months and imposed fine sum of Rs.1,000/- in default of payment of fine to undergo imprisonment for one month. As against the said judgment of conviction and sentence, the appellant filed a present Criminal Appeal before this Court.

5 The learned counsel for the appellant would submit that the case of the prosecution even in the statement submitted by the accused during the 313 proceedings has been denied the allegations and also she has given the reason, when the



occurrence took place on 09.10.2012. But FIR was registered on 13.10.2012 at about 10.00a.m., there is a delay in filing the FIR. Even in the statement made under Section 164 Cr.P.C., before the learned Judicial Magistrate has clearly stated that only due to stomach pain she consumed the poison. Further she has no reason to commit suicide or to kill the child. Hence she was committed the offence under Section 302 and 304(i) of IPC. Further, he would submit that the prosecution failed to establish its case beyond reasonable doubt. Therefore, the learned Sessions Judge convicted her which warrants interference by this Court.

6 The learned Government Advocate (Criminal Side) for the respondent would submit that due to the family dispute and wordy quarrel between the husband and wife she had consumed poison and also she gave poison to her child who was aged about 1 ½ of years old. A person cannot take away the life with his own violation. Due to the provocation she has taken the decisions to take away her life and consumed poison and gave the same to her child also. Ex.P20 had clearly proved that she has admitted that she has been confused that she consumed poison and also the same was given to her daughter also. She is an adult so after treatment she became normal but the child died. Hence, the learned Sessions Judge rightly convicted the accused which does not warrant any interference.

7 Heard both sides and perused the materials available on record.

8 The case of the prosecution is that the defacto complainant Mani @ Allimuthu is the husband of the accused Vijaya and father of the deceased baby kanishka. The complainant got marriage with accused 2 years ago. Out of their wedlock they were blessed with one female child. On 09.10.2012 the complainant came to house after his work and saw that the accused had prepared insufficient food, when the complainant questioned the same wordy quarrel arose between them. That being the state of affairs, the accused became wild and provoked because of her husband's scoldings and developed her mind to commit suicide and to murder her 1 ½ years baby Kanishka. Immediately on 10.10.2012 at about 09.00a.m., when the complainant went for work, at that time the accused brought "Oduvanthalai" with an intention to cause death to her baby knowingly mixed with cerelac and gave it to the baby, immediately the baby became unconscious, and was taken to Vinayaga Mission Hospital, Salem, where it was reported that the child was dead due to poisoning of 'Cleistanthus Collinus' i.e.,



Oduvanthalai on 13.10.2012 and thereby the accused had committed an offence punishable under Section 302 of IPC. In continuance of the same, the accused knowingly and intentionally attempted to commit suicide, and consumed the Oduvanthalai juice, which is highly poisonous, likely to cause death. Under such circumstances the accused had attempted to commit suicide by consuming the Oduvanthalai juice and thereby, had committed an offence punishable under Section 309 of IPC.

9 Since, the Appellate Court is the final Court of fact finding and it can to re-appreciate the entire evidence and come to an independent conclusion that whether the prosecution has proved its case beyond reasonable doubt. The accused has committed the offence and proved by the prosecution. No doubt the accused is the wife and the complainant is the husband. The defacto complainant is the husband of the accused and he has registered the complaint before the respondent police. But subsequently, after realizing the situation and he did not support the case of the prosecution. Though, the accused and the victim are family members, and had wordy quarrel between them the accused taken the decision to consume poison, therefore, it is not surprise that the witness has turned hostile.

10 On reading of the entire materials EX.P20 recorded by P.W.2 stated that being the dying declaration at the time when she was admitted in the hospital, the learned Magistrate recorded the statement from the appellant. The appellant has clearly admitted that she consumed poison due to the stomach pain and also she gave the poison to the child. The statement under Section 164 of Cr.P.C., made before the learned Judicial Magistrate, and the evidence of the doctor that she has consumed poison and the same was corroborated by the evidence of P.W.8. Therefore no other evidence is necessary to find out that the accused has committed the offence. The medical evidence also corroborated the same. The learned counsel for the appellant would submit that the accused was admitted in the Government hospital, Salem, but the medical certificate was not produced. FIR also registered after three days from the date of occurrence.

11 On considering the case, there was a wordy quarrel between the family members and due to the quarrel the accused suddenly taken the decision to consume poison and gave the same to her child also. Thereafter, she was admitted in Government hospital immediately. The statement recorded under Section 164 of Cr.P.C., from the deceased which was marked as Ex.P20 and which was corroborated by the evidence of P.W.8 doctor who has given treatment to the deceased Kanishka and the accused Vijaya.



12 Therefore, under these circumstances as stated by the learned counsel for the respondent a man has no right to take away her life and also the child life. On considering the entire materials this Court finds that the prosecution has proved its case beyond reasonable doubt that due to the wordy quarrel the accused consumed poison and has given the poison to the child also. Considering the view that it is only due to the family quarrel between the husband and wife.

13 Hence, the learned principal Sessions Judge, Namakkal, found guilt of the accused convicted for the offence under Section 304(i) of IPC and sentenced to undergo Simple imprisonment for one year and imposed a fine of Rs.5000/- in default to undergo three month Simple Imprisonment and convicted for the offence under Section 309 of IPC and sentenced to undergo Simple Imprisonment for six Months and imposed a fine for a sum of Rs.1000/- in default to undergo one month Simple Imprisonment.

14 Considering the facts and circumstances of the case, the accused has committed the offence punishable under Section 304(i) and 309 of IPC. There is no reason to interfere with the judgment of the learned Principal Sessions Judge, Namakkal, in S.C.No.89 of 2014. Therefore, this Court does not find any merits in this appeal. Accordingly, this present Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The learned Principal Sessions Judge,
Namakkal.
2. The Judicial Magistrate,
Rasipuram.



3.-Do- Thro The Chief Judicial Magistrate,
Namakkal.

4.The Inspector of Police,
Mangalapuram Police Station,
Namakkal District.

5.The Public Prosecutor,
High Court,
Madras.

Crl.A.No.257 of 2017

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srg 13/01/2020