

**Bail Slip**

Rasu s/o Chinnappa Reddiar, the appellant/ Sole Accused is released on bail as per the order of Court dated 06.09.2011 made in MP(MD)No.2 of 2011 in CRL A (MD)No.258/2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.258 of 2011

Rasu

... Appellant/ Sole Accused

Vs

State represented by,
The Inspector of Police,
Kalugumalai Police Station,
Crime No.16/2010,
Tuticorin District.

... Respondent/ Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records relating to the Judgment dated 31.01.2011 made in S.C.No.167 of 2010 passed by the learned Additional Sessions Judge (Fast Track Court No.I), Tuticorin Division, Tuticorin and set aside the same.

For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.S.Duraiaraj

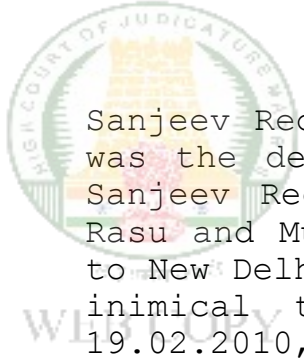
For Respondent :Mr.A.Robinson
Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offence under Section 304 (i) of IPC and sentenced to seven years rigorous imprisonment and levied with fine of Rs.5,000/- vide Judgment dated 31.01.2011 in S.C.No.167 of 2010 on the file of the Additional Sessions Judge, Fast Track Court No.1, Thoothukudi.

2.The prosecution case in brief as follows:

The appellant Rasu hails from Velayuthapuram Village. He was said to have developed illicit intimacy with one Murugeswari. The said Murugeswari is the wife of one Sanjeev Reddiyar. The said

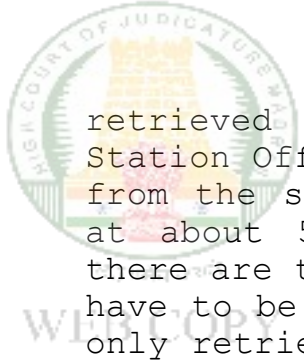


Sanjeev Reddiyar was working in New Delhi. Sanjeev Reddiyar's aunt was the deceased Guruvammal. Guruvammal is said to have informed Sanjeev Reddiyar about the illicit intimacy between the appellant Rasu and Murugeswari. Therefore, Sanjeev Reddiyar took Murugeswari to New Delhi. This is said to be the motive for the appellant to be inimical towards Guruvammal. On the occurrence day that is 19.02.2010, at about 3.30 p.m., the appellant pushed Guruvammal into her well and got down through the pipe and drowned her to death. Ex.P1 complaint was lodged by Thiru.Sambath who is the nephew of the deceased Guruvammal and the brother of the Sanjeev Reddiyar. Based on Ex.P1-Complaint, Ex.P7-FIR in Crime No.16 of 2010 was registered on the file of the Kalugumalai Police Station for the offences under Section 302 of IPC. Investigation was taken up and final report came to be laid against the appellant for the offence under Section 302 of IPC before the Judicial Magistrate No.1, Kovilpatti. Cognizance of the offence under Section 302 of IPC was taken and since it was exclusively triable by the Sessions Court, the case was committed in P.R.C.No.12 of 2010. The case was made over to the Additional Sessions Judge, Fast Track Court No.1, Thoothukudi in S.C.No.167 of 2010. Charge under Section 302 of IPC was framed against the appellant. He pleaded not guilty and claimed to be tried. The prosecution examined as many as 11 witnesses and marked Ex.P1 to Ex.P9. On the side of the accused, no evidence was adduced. The learned trial Judge, after a detailed consideration of the evidence on record, found the appellant guilty of the offence under Section 304(i) of IPC and sentenced him as mentioned above. Challenging the same, this appeal has been filed.

2.Heard the learned Senior Counsel appearing for the appellant and the learned Government Advocate (Crl.side) appearing for the prosecution case.

3.The learned Senior Counsel appearing for the appellant submitted that the prosecution had projected P.W.1 Sampath as a witness. His core argument is that a mere reading of his deposition would clearly show that he could not have been a witness. His testimony cannot inspire the confidence of this Court. P.W.1 being nephew of the deceased Guruvammal could not have simply kept quiet. When he saw the old lady being drowned to death by the appellant, he would have definitely raised an alarm or he would have done something to rescue the old lady. The conduct of P.W.1 appears to be very artificial. I am in full agreement with the submission of the learned Senior Counsel that P.W.1 could not have witnessed to the occurrence.

4.But then, the prosecution case will not get undermined even if I eschew the testimony of P.W.1 in toto. The fact remains that Guruvammal died due to drowning in the well in question. The well is located in the field of Sanjeev Reddiyar. Sanjeev Reddiyar was employed in New Delhi. Therefore, this Court can safely assume that his aunt Guruvammal was the care taker of Sanjeev Reddiyar's field. It has been established beyond doubt that the body of Guruvammal was



retrieved only from the said well. P.W.7-Kalimuthu is the Fire Station Officer who brought out the body of the deceased Guruvammal from the said well. Interestingly, P.W.7 had received information at about 5.30 p.m., from the Velayuthapuram Police Station that there are two persons found inside the said well and that, they will have to be rescued. The Fire Service Personnel headed by P.W.7 not only retrieved the dead body of Guruvammal but also brought out the appellant alive from the said well. P.W.7 was cross examined and it is not denied that a person was brought out alive from the said well. Now the question is who was the person brought out alive from the well. In all fairness to the appellant, P.W.7-Kalimuthu does not anywhere in his testimony claim that he rescued the accused/appellant. But then, while cross examining P.W.11-Investigating Officer, it was suggested that P.W.7-Kalimuthu rescued the accused/appellant and handed him over to P.W.11 at 06.00 p.m., itself. The case of the Fire Service Personnel is that they received information at around 5.30 p.m., and that, they rushed to the spot. Even according to the appellant, he was rescued by P.W.7-Fire Service Personnel at 06.00 p.m., and handed over to the Police. Thus, the presence of the accused inside the well is admitted. Now it is for the appellant to explain as to how he came to be inside the well along with the dead body of the deceased. In the examination under Section 313 of Cr.P.C., the appellant has not come out with any explanation. Section 106 of Indian Evidence Act states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The prosecution has established beyond reasonable doubt that the accused had an inimical motive towards the deceased Guruvammal. Guruvammal is found dead inside the well belonging to her nephew. The appellant is also found inside the very same well and both were brought out only by the Fire Service Personnel. P.W.1 had stated that he saw the deceased Guruvammal as well as the appellant inside the well and that he informed the local police immediately thereafter. While I don't believe that P.W.1 actually saw the appellant pushing Guruvammal into the well, the circumstances clearly implicate the appellant herein.

5. The appellant has not come out with any explanation. It is quite possible that the appellant picked up quarrel with the deceased Guruvammal, while both were standing on the edge of the well. The well no doubt had a parapet wall. Since the appellant has not explained as to how both of them fell into the well, it is not for this Court to guess as to what had actually happened. The appellant must be happy that he was not found guilty of the charge of murder but only for the lesser offence under Section 304(i) of IPC. I find no ground to interfere with the conviction imposed by the Court below. However, taking note of the fact that the appellant is having wife and two children and that he is the sole bread winner of the family, the period of sentence is reduced from seven years rigorous imprisonment to five years rigorous imprisonment. The period of incarceration already undergone by the appellant will be set off in terms of Section 428 of Cr.P.C.



6. With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar

To

1. The Additional Sessions Judge (Fast Track Court No.I),
Tuticorin Division, Tuticorin.

2. The Judicial Magistrate No.I, Kovilpatti.

3. The Chief Judicial Magistrate, Tuticorin.

4. The Inspector of Police,
Kalugumalai Police Station, Tuticorin District.

5. The Superintendent, Central Prison, Palayamkottai.

6. The Additional Public prosecutor,
Madurai bench of Madras High Court,
Madurai.

7. The Section Officer, Criminal Section (2 Copies)
Madurai bench of Madras High Court,
Madurai.

+1 CC to M/s.S.DURAIRAJ, Advocate (SR-77588[F] dated 25/07/2019)

Cr1.A(MD)No.258 of 2011
24.07.2019

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