

**BAIL SLIP**

Nagaraj, Male, 32 years, S/o.Subramani, Appellant/Accused was released on bail of this Court order dated 26/10/2010 made in MP(MD) No.1 of 2010 in Cr1 A(MD)No.328 of 2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 A(MD)No.328 of 2010

Nagaraj

... Appellant/Sole Accused

Vs.

State, rep.by
The Inspector of Police,
Velayuthampalayam Police Station,
Karur District.

... Respondent/Complainant

(in Crime No.19 of 2008)

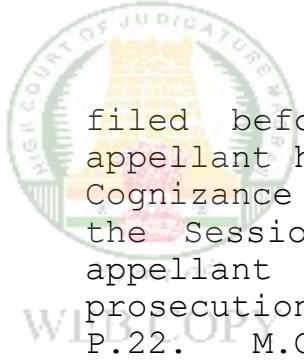
Prayer : This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, against the judgment and order of conviction passed in S.C No.84 of 2008 by order dated 14.09.2009 on the file of the learned Sessions Judge, Karur.

For Appellant : Mr.N.Mohideen Basha

For Respondent : Mrs.S.Bharathi,
Government Advocate (crl.side)**JUDGMENT**

The appellant was convicted for the offence under Section 304 (i) IPC and sentenced to undergo five years rigorous imprisonment and levied with a fine of Rs.1,000/- vide judgment dated 14.09.2009 in S.C No.84 of 2008 on the file of the Sessions Judge, Karur.

2.The prosecution case is that the appellant hacked his wife Pushpa to death on 12.01.2008 at about 03.00 A.M within the premises of Karpagavinayaka Blue Metals at Kunnam Sadayampalayam as the appellant suspected the fidelity of his wife. In this regard, P.W.1 Kavitha lodged Ex.P1 complaint before the Velayuthampalayam Police Station leading to registration of Ex.P15 FIR in Crime No.19 of 2008. Investigation was undertaken and final report came to be

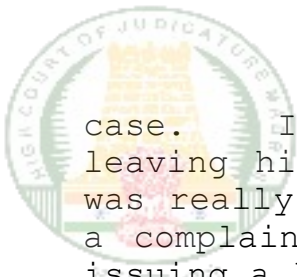


filed before the Judicial Magistrate No.2, Karur against the appellant herein for the offence under Sections 302 and 506(ii) IPC. Cognizance of the offence was taken and the case was committed to the Sessions Court and taken up in S.C No.84 of 2008. The appellant pleaded not guilty and claimed to be tried. The prosecution examined as many as 10 witnesses and marked Exs.P1 to P.22. M.O.1 to M.O.13 were also marked. On the side of the accused, Ex.D2 lawyer notice was marked apart from D.1 acknowledgment card and Ex.D3 Xerox copy of the FIR. The learned Trial Judge after a detailed consideration of the evidence on record, convicted and sentenced the accused as mentioned above. Challenging the same, this appeal came to be filed.

3.P.W.1 is a child witness. She was aged around 12 years at the time of occurrence. She had given a statement under Section 164 of Cr.PC before the Judicial Magistrate also. P.W.1 had supported the case of the prosecution in toto in her chief examination. However, in the cross examination, she had stated that she was tutored into implicate the appellant. But then, this Court cannot reject the testimony of P.W.1 in toto on that ground. It is relevant to point out herein that it was P.W.1 who lodged Ex.P1 complaint. According to P.W.1, she was sleeping next to the deceased Pushpa. The complaint was lodged at around 09.30 A.M on the same day. The occurrence itself took place at 03.00 A.M.

4.According to the prosecution, the accused was working as a resident labour in the crusher unit since 2000 along with his mother. He got married to Pushpa the deceased in the year 2003. Pushpa had developed illegal intimacy with one Kuppusamy and that was the motive for committing the murder in question. The accused contended before the trial court that he escaped from the crusher unit in July, 2007 itself and caused issuance of a lawyer's notice on 18.07.2007. He also marked copies of the same to various authorities. P.W.2 is the owner of the crusher unit. He was confronted with Exs.D1 and D2. P.W.2 would claim that he did not remember if he received lawyer's notice, but, he admitted the signature found in Ex.D1.

5.Therefore, this Court concludes that Ex.D2 advocate notice was actually issued by the appellant to P.W.2/owner of the crusher unit. The defence of the accused is that he wanted to escape from the unit as he was being kept as a bonded labour. After escaping from the unit, he issued the lawyer notice. Therefore, P.W.2/the owner of the crusher unit was inimically deposed towards the appellant. I find it very difficult to buy this theory. It is relevant to note here that the accused had at no point of time claimed that Pushpa had developed illegal intimacy with one Kuppusamy. In other words, it is not the case of the accused that he suspected the fidelity of his wife. It is only the prosecution



case. If that be so, no person would escape from the work place leaving his young wife and aged mother behind. If the appellant was really kept as a bonded labour, he would have definitely lodged a complaint before the statutory authorities and he would not be issuing a lawyer notice to the owner of the crusher unit.

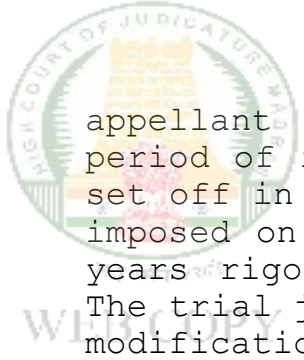
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6.This Court wanted to verify if really complaints were sent to the statutory authorities. In Ex.D2 notice, it has been mentioned that copies have been marked to the various authorities including to the Chief Minister's Special Cell. But no acknowledgment card was marked. This Court can take judicial notice of the fact that atleast in the State of Tamil Nadu if a complaint is sent to the Chief Minister's Special Cell, it is immediately marked to the concerned department and an action taken report is also called for. The occurrence had taken place in January 2008. A complaint was said to have been sent in July, 2007. If really a complaint had been sent by the appellant to the CM Cell, his wife as well as his mother would have been rescued by then. Therefore, I can conclude that except sending a lawyer notice to the owner of the crusher unit, the appellant did nothing else.

7.It is admitted that the appellant got married to Pushpa in the year 2003. No man will leave behind his young wife in the crusher unit, while escaping. It is true that P.W.1 child witness was shaken during cross examination. But then, this Court has to take note of the fact that P.W.1 was a young girl child aged hardly 12 years. If P.W.2 wanted to falsely implicate the appellant he will not chose a young child like Kavitha to lodge a police complaint. The appellant was arrested on the very next day and following his arrest, M.O.1 bill hook was recovered. Ex.P.18 is the admissible portion of the confession statement given by the appellant Nagaraj. The court below rightly held that the prosecution proved the involvement of the appellant beyond reasonable doubt.

8.Having regard to the evidence on record, the learned counsel appearing for the appellant rightly did not challenge the finding of guilt and he confined his arguments only in respect of sentence. The prosecution case is that Pushpa eloped with Kuppusamy and therefore, the appellant had a motive against her. This Court can very well understand the mental agony to which the appellant was subjected to. The occurrence itself is of the year 2008. The appellant's counsel submitted that the appellant has got married to another woman and is having two children.

9.Taking note of the mitigating circumstances, I am of the view that the sentence of imprisonment imposed on the appellant can be reduced from five years to three years rigorous imprisonment. The



appellant appears to have spent about 18 months in prison. The period of incarceration already undergone by the appellant shall be set off in terms of Section 428 of Cr.PC. I sustain the conviction imposed on the appellant. I however modify the sentence from five years rigorous imprisonment to three years rigorous imprisonment. The trial judge shall take steps to enforce this order. With this modification in the matter of sentence, this appeal is partly allowed.

Sd/-

Assistant Registrar (A.S)

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Sub Assistant Registrar(CS)

To

- 1.The Judicial Magistrate No.II, Karur.
- 2.The Chief Judicial Magistrate, Karur.
- 3.The Sessions Judge, Karur.
- 4.The Principal Sessions Judge, Karur.
- 5.The Superintendent, Central Prison, Salem.
- 6.The Inspector of Police, Velayuthampalayam Police Station, Karur District.
- 7.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.N.MOHIDEEN BASHA, Advocate SR-82068.

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CS(19.09.2019) 4P 9C