



Bail Slip

Narayana Perumal, Male, S/o.Poulraj Nadar, who is the Appellant/Sole Accused in Crl.A(MD)No.33/2010 was directed to be released on bail vide Order of this Hon'ble Court dated 18.02.2010 made in MP(MD)No.1/2010 in Crl. A(MD)No.33 of 2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.33 of 2010

Narayana Perumal

... Appellant/Accused

Vs.

The State,
By the Inspector of Police,
Nazereth Police Station,
Tuticorin District,
Crime No.65 of 2008.

... Respondent/Respondent

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the entire records pertaining to the order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No.1, Tuticorin, in S.C. No.166 of 2009, dated 30.01.2010 and set aside the same and discharge the appellant/accused.

For Appellant : Mr.R.Venkatesan,
Legal Aid Counsel.

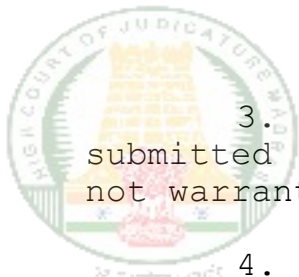
For Respondent : Mr.S.Bharathi,
Government Advocate (Crl. Side).

* * *

JUDGMENT

The appellant was found guilty of the offence under Section 304(B) of I.P.C. and sentenced to undergo seven years Rigorous Imprisonment and also levied with fine vide Judgment dated 30.01.2010 in S.C.No.166 of 2009 on the file of the Additional Sessions Judge, Fast Track Court No.1, Thoothukudi. Challenging the same, this Criminal Appeal has been filed.

2. The learned counsel appearing for the appellant reiterated the contentions set out in memorandum of grounds and wanted this Court to reverse the Judgment of the Court below.

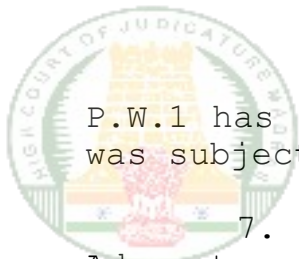


3. Per contra the learned Government Advocate(Criminal Side) submitted that the Judgment impugned in this Criminal Appeal does not warrant any interference.

4. I carefully considered the rival contentions and perused the evidence on record.

5. The appellant got married to the deceased Rathinamani on 12.07.2001. She died by self-immolation on 28.05.2008. P.W.1 mother of the deceased lodged Ex.P.1 complaint. Based on the same, Crime No.65 of 2008 was registered on the file of the Nazereth police station on 29.05.2008(Ex.P.11). It is relevant to note here that First Information Report was registered only under Section 174 of Cr.P.C. P.W.19 registered the First Information Report. P.W.20 took up further investigation. Inquest was held on 29.05.2008. P.W.18 submitted his Inquest Report Ex.P.9 indicating that the death was only due to dowry demand. Therefore, the investigation was handed over to P.W.20. Ex.P.13 Alteration Report was submitted and the First Information Report was altered from Section 174 of Cr.P.C. to Section 304(B) of I.P.C. and report was submitted to the learned Judicial Magistrate, Sathankulam. P.W.21 was the Deputy Superintendant of Police who filed final report before the learned Judicial Magistrate, Sathankulam. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court. It was made over to the Additional Sessions Judge, Fast Track Court No.1, Thoothukudi, in S.C.No.166 of 2009. Charges were framed for the offences under Sections 304(B) and 306 of I.P.C. The accused pleaded that he was not guilty of the offences and claimed to be tried. The prosecution examined as many as 21 witnesses and marked Ex.P.1 to Ex.P.13. M.O.1 and M.O.2 were also marked. On the side of the accused, no evidence was adduced. The learned trial Judge by Judgment dated 30.01.2010 held that the appellant was acquitted of the charge only under Section 306 of I.P.C. and he was found guilty of the charge under Section 304(B) of I.P.C. He was sentenced to seven years Rigorous Imprisonment. Challenging the same, this Criminal Appeal has been filed.

6. Section 304(B) of I.P.C. will be attracted only if it can be established beyond reasonable doubt by the prosecution that before the death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. Only in such case, it can be called as dowry death and the offender can be held liable under Section 304(B) of I.P.C. This Court therefore wanted to know if soon before her death, she was subjected to such cruelty. P.W.1 is the mother of the deceased. P.W.2 is the father of the deceased. But then, P.W.2 was a life convict, when the occurrence had taken place. P.W.3 is the brother of P.W.1. P.W.4 to P.W.10 turned hostile. Others are only official witnesses. Therefore, the entire case of the prosecution will have to necessarily stand or fall on the examination of P.W.1. The chief examination of P.W.1 was cryptic.



P.W.1 has not stated that soon before the death of Rathinamani, she was subjected to any kind of dowry demand.

7. Of course as rightly pointed out by the learned Government Advocate, the deceased is said to have given a complaint against the appellant before Thiruchendur All Women police station that the appellant was demanding dowry from her. But then, it is not stated as to when the complaint was given. In any event, the said complaint was withdrawn by the deceased herself. But even though the deceased had stated to the police that she is willing to lead a happy life with the appellant, according to P.W.1, the deceased did not join the husband. Only on 28.05.2008, the deceased had informed her mother and left for the matrimonial home. Thereafter, from one Anburaj, P.W.1 received information that her daughter had committed self-immolation. It is seen from the testimony of P.W.1 as well as the alternative charge that the appellant got married to one Jansy Rani.

8. This Court is therefore of the view that this could have been the reason for the death of commission of self-immolation by the deceased. In any event, from the evidence of the prosecution witnesses there is nothing to indicate that soon before her death, the deceased was subjected to dowry demand. Thus essential ingredients under Section 304(B) of I.P.C. have not been satisfied in this case. As already pointed out, though the trial Court acquitted the appellant under Section 306 of I.P.C, the State had not filed any appeal challenging the acquittal of the appellant for the offence under Section 306 of I.P.C. Therefore, I am of the view that the Judgment of the trial Court cannot be sustained.

9. In this view of the matter, the Judgment passed by the Court below convicting the appellant for the offence under Section 304(B) of I.P.C. is set aside. The Criminal Appeal stands allowed. The appellant is acquitted of the charge under Section 304(B) of I.P.C. The bail bond, if any, executed by him shall stand cancelled and fine amount, if any, paid by him, is to be repaid to him. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To:

1. The Additional Sessions Judge,
Fast Track Court No.1, Tuticorin.
2. The Judicial Magistrate, Sathankulam.
3. The Inspector of Police,
Nazereth Police Station,
Tuticorin District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to : The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.VENKATESAN, Advocate SR-75505.

Crl.A. (MD) No.33 of 2010
15.07.2019

CS(03.10.2019) 4P 8C