

**BAIL SLIP**

1.Navaneethakrishnan @ Venkatesh, S/o Kanakaraj, Male, Age 34/14, the first Appellant/A1 in Crl A(MD) No.281/2014 was directed to be released on bail vide order of this Hon'ble court dated 09.01.2015 made in MP (MD)No.1 of 2015 in Crl.A(MD)No.281 of 2014.

2.Kanakaraj, S/o Palaniyandi Pillai, Male, Age 63/14, 3.Maheswari, W/o Kanakaraj, female age 55/14 who are the Appellants 2 and 3 /A2 and A3 in Crl A(MD) No.281/2014 respectively were directed to be released on bail vide order of this Hon'ble court dated 05.01.2015 made in MP (MD)No.1 of 2014 in Crl.A(MD)No.281 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:16.08.2019

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THE HONOURABLE MRS.JUSTICE **T.KRISHNAVALLI**

Crl.A(MD)No.281 of 2014

1.Navaneethakrishnan @ Venkatesh

2.Kanakaraj

3.Maheswari

: Appellants/A1 to A3

Vs.

The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai District.

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the District and Sessions Judge (Mahila Court), Pudukkottai, in S.C.No.114 of 2012, dated 08.10.2014.

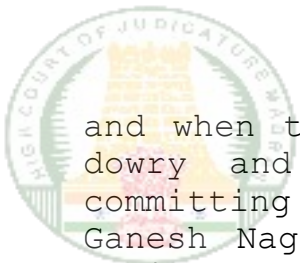
For Appellants : Mr.P.Ganapathi Subramanian

For Respondent : Mr.R.Anandha Raj
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgment passed by the District and Sessions Judge, (Mahila Court), Pudukkottai, in S.C.No.114 of 2012, dated 08.10.2014.

2.According to the prosecution, the marriage between the deceased Akila and A1 was solemnized on 10.02.2008 and after marriage, both of them living happily sometime and thereafter, the deceased came to know that her husband had illicit intimacy with A4



and when the same was questioned, the parents of A1 demanded more dowry and due to which, the deceased died on 15.11.2008 by committing suicide by hanging. The Inspector of Police attached to Ganesh Nagar Police Station, Pudukkottai has filed a final report against the accused examining the witnesses.

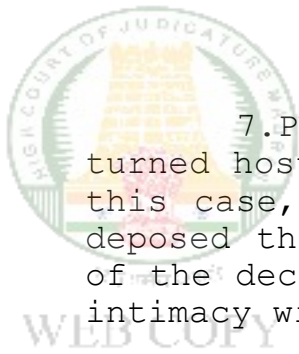
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3. In the trial court, 13 witnesses were examined and 18 Exhibits and 4 material objects were marked. When the accused were questioned about the incriminating circumstances, they denied the same. On the side of the accused, no witness was examined and no document was produced. The trial court convicted the appellants/A1 to A3 for the offence under Sections 498(A), 304(B) and 306 IPC and convicted A4 for the offence under Section 109 r/w 498(A) and 306 IPC and sentenced the appellants/A1 to A3 to undergo 3 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 6 months RI for the offence under Section 498(A) IPC and 7 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 1 year RI for the offence under Section 304(B) IPC and 3 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 6 months RI for the offence under Section 306 IPC and directed to run the sentences concurrently. Aggrieved by the judgment passed by the trial court, the appellants/A1 to A3 are before this court.

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

5. The main contention raised on the side of the appellants/A1 to A3 is that the report submitted by the Revenue Divisional Officer is not clear and the same cannot be relied upon for any purpose and when the persons gave the statement are alive, the statement recorded by PW8 is of no value and all the independent witnesses turned hostile and the conviction ought not to have been given on the basis of Ex.P12 given by the PW8 (Revenue Divisional Officer) and the reasons for the death of the deceased were not due to demand of dowry and even as per the documents relied upon by the prosecution, there is no chance for suicide and only due to depression of the deceased about her inability to give birth a child and there was no ill-treatment or demand of dowry from the parents of the deceased and prays that the appellants/A1 to A3 are entitled to acquittal.

6. PW1 is the mother of the deceased and she gave Ex.P1 complaint. PW1 in her complaint stated that due to demand of dowry, his daughter committed suicide. But PW1 during her evidence stated that after marriage of her daughter with A1, her daughter lived happily and 11 months after the occurrence, her daughter died and she did not know the cause for her death and she only put her signature in a written statement and she did not know the contents of the written statement and she turned hostile and did not support the case of the prosecution.



7. PW2 to PW6 are cited as eye witnesses. But PW2 to PW6 turned hostile and did not support the case of the prosecution. In this case, the Revenue Divisional Officer was examined as PW8. PW8 deposed that he examined the witnesses and the cause for the death of the deceased was due to dowry demand and her husband had illegal intimacy with A4.

8. The learned counsel appearing for the appellants/A1 to A3 submitted that all the independent witnesses turned hostile, but the trial court on the basis of the report of the Revenue Divisional Officer convicted the accused is not correct and the statement of witnesses before the Revenue Divisional Officer cannot be relied on by the prosecution in view of the embargo under Section 162 and such statement is not sustainable as piece of evidence and the same can be used by the defence to contradict author/maker of statement and the court cannot mark the statement of the Revenue Divisional Officer, which is in the nature of police statement under Section 161 and on the basis of the Revenue Divisional Officer, the accused cannot be convicted. For that, the learned counsel appearing for the appellants/A1 to A3 submitted the decision reported in **2016(3) MWN (Cr) 481 (Gunasekaran Vs. State)**.

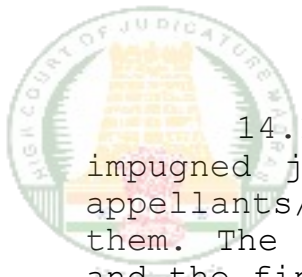
9. In the case on hand, the trial court convicted the accused on the basis of the Revenue Divisional Officer report. The statement relied upon by the Revenue Divisional Officer can be used to contradict. But the court on the basis of the Revenue Divisional Officer report convicted the accused. Hence, the findings given by the trial court is not correct.

10. Further, the learned counsel appearing for the appellants/A1 to A3 submitted that PW8 admitted that on 16.11.2008, the accused are in the police station and hence, it is not possible to arrest the accused on 17.11.2008 and there was no possibility for A1 to give confession and hence, the arrest and recovery theory put forth on the side of the prosecution is not at all acceptable and prays that the appellants/A1 to A3 are entitled to acquittal.

11. In this case, PW8 during his cross examination admitted that he saw that A1 to A3 available in the police station on 16.11.2008. But as per the prosecution case, the accused were arrested on 17.11.2008 and A1 gave the confession and on the basis of the confession, material objects were recovered. Hence arrest and recovery theory put forth by the prosecution creates doubt.

12. On careful perusal of the evidence of the witnesses and documents, it reveals that the prosecution failed to prove the case beyond reasonable doubt.

13. For all the reasons stated above, this court is of the considered view that the prosecution has not proved the case beyond reasonable doubt and hence, the impugned judgment of the trial court is liable to be set aside.



14. In the result, this Criminal Appeal is **allowed**. The impugned judgment of conviction and sentence are set aside. The appellants/A1 to A3 are acquitted of the charges levelled against them. The bail bond if any executed by them shall stand cancelled and the fine amount if any paid by them shall be refunded to them.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

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To,

1. The District and Sessions Judge,
(Mahila Court), Pudukkottai.
2. The Judicial Magistrate. Pudukkottai.
3. -Do- Thro The Chief Judicial Magistrate, Pudukkottai.
4. The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai District.
5. The Superintendent, Central Prison, Trichy.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.P.GANAPATHI SUBRAMANIAN, Advocate (SR-82099[F] dated 16/08/2019)

Cr1.A(MD)No.281 of 2014
16.08.2019