

Bail Slip

The accused viz., Sathik @ Sathik Ali, S/o. Hussain Shahib, was enlarged on bail vide order dated 15/12/2014 made in CrI.M.P.No.1 of 2014 in CrI.A.No.612 of 2014 on the file of High Court of Judicature at Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Criminal Appeal No.612 of 2014

Sathik alias Sathik Ali ...Appellant/Accused

Vs.

State rep. by
The Inspector of Police,
Gobichettipalayam Police Station,
Erode District. ...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence passed by the learned Sessions Judge (Fast Track-Mahila Court), Erode, in S.C.No.26 of 2014 dated 24.11.2014.

For Appellant : Mr.A.K.Kumaraswamy

For Respondent : Mr.S.Karthikeyan

Additional Public Prosecutor

J U D G M E N T

The present Criminal Appeal has been filed to set aside the judgment of conviction and sentence dated 24.11.2014 passed in S.C.No.26 of 2014 by the learned Sessions Judge, (Fast Track-Mahila Court), Erode. सत्यमेव जयते

2. The appellant is the sole accused. He stood charged for the offence under sections 498-A and 306 IPC. By judgment dated 24.11.2014, the learned Sessions Judge, (Fast Track-Mahila Court), Erode, convicted the appellant under Section 498-A of IPC and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.100/- in default, to undergo simple imprisonment for one month. Further, the appellant was convicted under Section 306 of IPC and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.100/- in default, to undergo simple imprisonment for one month. Challenging the said conviction and sentence, the accused is before this Court, by way of filing the present Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:-

(i) PW1-Kasim Rowther, is the father of the deceased Nilovar Nisha. PW2-Salim, is the brother of the deceased. Before five years from the date of occurrence, the marriage between the deceased and the accused was solemnized in Kerala as per the Muslim Rites and Customs. After the marriage, both the deceased and her husband, are residing in Gobichettipalayam. During the time of marriage, PW1, had given ten sovereigns of gold to the appellant/accused as a Sreethana property. After the marriage, the deceased had given birth to one male child and during such time, the accused was employed in a spinning mill.

(ii) After some time from the date of said marriage, the appellant herein lost his job and refused to provide sufficient food to the deceased. One day prior to the occurrence, the deceased contacted PW1, through telephone and made allegation against her husband that he has beaten her. Subsequent to the said information, she committed suicide and immediately after the occurrence, the appellant herein brought the Nilovar Nisha/deceased to the Government Hospital, Gobichettipalayam for treatment and therein PW4-Dr.Ramesh Babu, admitted the deceased as in-patient and issued an Accident Register copy under Ex.P4. Further, he intimated the occurrence to the police station under Ex.P5. However on 17.04.2012 itself, at 4.20AM, the said Nilovar Nisha died and thereafter, PW5-Dr.Kannan, informed the same to the Gobichettipalayam Police Station, under Ex.P6.

(iii) In the meanwhile, on the date of occurrence itself at about 8.30pm, after hearing of the occurrence, PW1 has informed about the suicide committed by his daughter to his two sons, who were residing in Coimbatore. Thereafter, on the next day, at about 11.00am, he went to the Government Hospital, Gobichettipalayam and found the dead body of his daughter. Subsequent to that, he lodged a complaint before the Police Officer under Ex.P1.

(iv) PW8-Tmt.Ramathilagam, the then Sub Inspector of Police, Gobichettipalayam Police Station, on receipt of the complaint given by PW1, registered a case in Cr.No.211 of 2012, under Section 174 of Cr.P.C. The printed FIR has been marked as Ex.P13. After the registration of the case, she had given the said FIR to the Deputy Superintendent of Police, Gobichettipalayam, for investigation. Further, she had informed the Revenue Divisional Officer, in respect to the alleged occurrence.

(v) PW10-Thiru.S.K.Sundararajan, the then Deputy Superintendent of Police, Gobichettipalayam, on receipt of the First Information Report from PW8, took up the same for

investigation. On the same day, at about 12.30pm, he visited the scene of occurrence and in the presence of PW3-Parthiban and one Sabibullah, he prepared an Observation Mahazar under Ex.P2. He had drawn the Rough Sketch and the same has been marked as Ex.P15. In the presence of the same witnesses, he recovered a polythene cover along with herbicide, which has been used for committing the suicide. Also he had recovered the 'Ever Silver' jar under the cover of Seizure Mahazar, which has been marked as Ex.P3. Thereafter, he examined the witnesses and recorded the statements.

(vi) In the meantime, on receipt of the information given by PW8, PW9-Mr.Palanisamy, the then Revenue Divisional Officer, Gobichettypalayam, rushed to the Government Hospital, Gobichettypalayam and examined the witnesses. He sent a letter to the hospital authorities under Ex.P7, for conducting the post-mortem over the dead body of Nilovar Nisha. Along with the same, he sent one another letter under Ex.P11, for sending the viscera for chemical examination, further he prepared the inquest report and came to the conclusion that the death of deceased Nilovar Nisha, was not due to the demand of dowry.

(viii) In the said circumstances, immediately after the receipt of the requisition letter given by the Revenue Divisional Officer, PW5-Dr.Kannan, along with one Dr.Sivakumar, conducted the post-mortem over the dead body of the deceased Nilovar Nisha and observed as under.

"No external injuries seen. Scalp: Intact. Eyelids-Closed. Nose-white frothy discharge seen. Mouth - No discharge. Tongue . Teeth 8/8. Ears-No discharge. Abdomen-uniform. Opening of Thorax: No ribs. Hean-250gm Left empty. R5 fluied blood seen. Lungs-congested. RT 350gm.LT 300gm. Hyoid Bone: Intact. Stomach-200ml of Black coloured fluid present with pungent odour. Mucos eroded. Liver: 900gm. Congested. Spleen-100gm congested. Kidney-120gm each. Congested. Intestines- distenced with gas. Bladder -empty. Uterus: Normal. Empty opening of Head-No fracture skull bone. Brain:900gms."

He collected the viscera and sent the same for chemical examination.

(viii) On receipt of the viscera, sent by PW5, PW6-Dr.Maria Selvi Roseline, attached with Forensic Science Department, Chennai, examined the viscera and found that there was 'oragano phosphorus' poison in the viscera collected from the dead body. In this regard, she issued a report under Ex.P8 and on receipt of the same, PW5, issued a post mortem certificate under Ex.P9 stating that the death is due to the

consumption of 'oragano phosphorus' poison . The final opinion given by the Doctor was marked as Ex.P10.

(ix) In continuation of the investigation, PW10 forwarded the material objects which were collected during the time of investigation to the Judicial Magistrate, Gobichettipalayam and thereafter, he handed over the case records to his successor for completing the investigation. On receipt of the same, PW11-Mr.Ramasamy, Deputy Superintendent of Police, who is the successor of PW10 completed the investigation and filed the final report against the appellant alleging that the accused/appellant has committed an offence under Sections 498-A and 306 of IPC.

4. Based on the above materials, the trial Court framed charges under Sections 498-A and 306 of IPC and the accused denied the same. In order to prove their case, on the side of the prosecution, as many as 11 witnesses have been examined as PW1 to PW11 and 18 documents were marked as Ex.P1 to Ex.P18, besides five Material Objects viz., M.O.1 to M.O.5.

5. Out of the said witnesses, PW1-Kasim Rowther, is the father of the deceased Nilovar Nisha. He had spoken about the cruelty committed by the appellant towards his daughter and also about the receipt of information in respect of the suicide committed by his daughter and also about the lodging of the complaint before the police.

6. PW2-Salim is the brother of the deceased. He has deposed about the marriage of the deceased with the appellant and also about the information given by his sister about the attack made by the appellant.

7. PW3-Parthiban, is the neighbour of the deceased. He had spoken about the preparation of the Observation Mahazar and recovery of material objects by the investigation officer.

8. PW4-Dr.Ramesh Babu attached with Government Hospital, Gobichettipalayam, had spoken about the treatment given to the deceased at the time of admitting her in the hospital. He has also stated about the sending of intimation to the police station. PW5-Dr.Kannan, attached with Government Hospital, Gobichettipalayam, has spoken about about the details of injuries and about the details of post-mortem conducted over the dead body of the deceased Nilovar Nisha. PW6-Dr.Maria Selvi Roselin, attached with Forensic Science Department, Chennai, has deposed about the examination of the Viscera, which were collected from the dead body.

9. PW7-Smt.Malathi, the Grade-I Police Constable has stated in her evidence about the handing over of the dead body for post-mortem and also about the handing over of M.O.3 to M.O.5, which have been collected from the dead body of the deceased to the investigation officer. PW8-Smt.Ramathilagam, PW10-Thiru.S.K.Sundararajan and PW11-Thiru.Ramasamy, are the police officers and they have stated about the details of the registration of the case, investigation and about the filing of the final report. PW9-Thiru.Palanisamy, is the Revenue Divisional Officer and he has stated in his evidence about the examination of witnesses and also about the opinion given by him in respect to the death of the deceased.

10. When the above incriminating materials were put to the accused, under Section 313 Cr.P.C., he denied the same as false. However, in order to prove his case, he neither produced any witness on his side nor marked any documents.

11. The learned Sessions Judge, (Fast Track-Mahila Court), Erode, after perusing all the above materials and on considering the arguments advanced by either side convicted and sentenced the accused as stated supra. Aggrieved over the conviction and sentence, the appellant is before this Court, with the present appeal.

12. The learned counsel appearing for the appellant/accused would contend that the evidence given by the prosecution witnesses are having lot of contradictions and the evidence put forth by PW1 and PW2, did not establish the fact that the appellant herein wilfully demanded the deceased for bringing more dowry. The evidence given by the medical officer and others, clearly prove the fact that the deceased committed suicide voluntarily without any instigation from others, particularly, by the appellant. He further added that for proving the offence under Section 306 of IPC, the main ingredients which are all defined in Section 107 of IPC is not available in this case. Accordingly, he prayed to allow the appeal and to setting aside the conviction and sentence awarded by the trial Court.

13. On the other hand, the learned Additional Public Prosecutor would contend that the evidence given by PW1 and PW2, clearly established the case of the prosecution as well as the wilful act committed by the accused for getting more dowry from the deceased. According to him, interference is not necessary in the conviction and the sentence passed by the trial Court.

14. I have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent police and have also perused the records carefully.

15. First of all, to bring home the charge under Section 306 of IPC, the prosecution has to prove

- (a) that the victim of the offence committed suicide;
- (b) that the accused committed the suicide of such offence and such abetment being one and under Section 107 of IPC.

In this regard, Section 107 of IPC defines abetment as comprising of,

- (i) instigation to commit the offence.
- (ii) engaging in conspiracy to commit the offence; and
- (iii) aiding the commission of the offence.

16. Here it is a case, for proving the above said important aspects, the evidence given by PW1 to PW3 alone, is available, as to the commission of offence committed by the appellant. Infact, the evidence of PW3, discloses the fact that he has not seen the abetment committed by the appellant. The evidence given by PW3 makes clear that he has heard the news through some other person. Further, he did not speak about the previous relationship existed between the appellant and the deceased.

17. In respect to the existing relationship between the appellant and the deceased, PW1 and PW2 did not say anything about the harassment committed by the appellant towards the deceased. Both of them have simply stated that only due to losing of job, he has not provided any food to the deceased. In this regard, PW2, had admitted in his cross examination that before the occurrence, the appellant herein informed to the PW2, that due to the stomach pain, he is unable to attend the mill work regularly. He had further stated in his cross examination that only due to the said problem, the deceased had attended some work for family expenses.

18. Therefore, the evidence given by PW1 and PW2 is very clear that due to health condition, the appellant herein has not earned much money and therefore, problem arose between the petitioner and the deceased. More than that the evidence given by PW1 is very clear that the deceased is having some heart ailment.

19. Further after the occurrence, the accused alone brought the deceased to the hospital and also he only informed the details of the suicide to PW1 and PW2. If really the appellant has abetted the commission of offence, it is not necessary for him to inform the suicide committed by the deceased to PW1 and PW2. Further, it is not necessary for him to take the deceased to the hospital immediately after the occurrence.

20. So, in all aspects, the evidence put forth by PW1 and PW2 is not in order to prove the instigation and aiding the commission of offence or abetment. Further, it is true that if a situation is created deliberately, so as to drive a person to commit the suicide, there will be a room for attracting Section 306 of IPC.

21. However, the evidence given by PW1 and PW2, in the present case are completely inadequate and insufficient. If the appellant/husband was not able to earn much money to run his family, it is for the deceased/wife to meet out and solve the financial crises happened in her family. Only in the said circumstances, she had attended some works and earned the money. Further, it is also an admitted fact that she is having some heart ailment, for which much money is needed for performing the surgery. The said circumstances may be the reason for the occurrence. In otherwise, the evidence given by the prosecution witnesses is not enough to prove the offence under Section 306 of IPC, as well as 498-A of IPC. Infact, none of the witnesses examined on the side of the prosecution had said anything about the demand made by the appellant/accused. Therefore, without hesitation, this Court comes to the conclusion that the learned Sessions Judge, (Fast Track-Mahila Court), Erode, without appreciating the evidence given by the prosecution witnesses, convicted the accused, which is found not correct. Therefore, the conviction and sentence awarded by the trial Court is liable to be set aside.

22. Accordingly, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Sessions Judge, (Fast Track-Mahila Court), Erode, in S.C.No.26 of 2014 dated 24.11.2014, are set aside and he is acquitted of all the charges. Fine amount, if any, paid, shall be refunded to the appellant/accused. Bail bond, if any, executed by the appellant/accused, shall stand cancelled.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.

2. The Sessions Judge,
Fast Track-Mahila Court,
Erode.

3. The Public Prosecutor,
High Court of Madras,
Madras.

4. The Judicial Magistrate,
No.1, Gobichettipalayam.

5. The Chief Judicial Magistrate,
Erode(for information)

6. The Superintendent,
Central Prison, Coimbatore.

Criminal Appeal No. 612 of 2014

CP(CO)
RV(18/12/2020)



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