



BAIL SLIP

The Petitioner / Accused viz P.Venkadesan son of Perumal was released on bail as per the order of this court dated 22.08.2019 in Crl.M.P.No.7161 of 2019 in Crl.A.No.68 of 2019 on the file this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.04.2021
PRONOUNCED ON : 26.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.68 of 2019

P.Venkadesan

Vs.

...Appellant

State Represented by
The Inspector of Police,
Veeranam Police Station,
Salem.
(Crime No.8 of 2010)

...Respondent

The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure seeking to set aside the judgment of conviction and sentence rendered by the learned Sessions Judge, Mahila Court, Salem, made in S.C.No.226 of 2012 dated 10.01.2019.

For Appellant : M/s.M.Guruprasad

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem, made in S.C.No.226 of 2012 dated 10.01.2019.

2 The respondent police registered a case in Crime No.8 of 2010 against the appellant for the offence punishable under Section 306 of IPC and after completing investigation, laid a charge sheet before the learned Judicial Magistrate No.4, Salem,



which was taken on file in P.R.C.No.49 of 2010. The learned Magistrate, after completing formalities, since the offence is exclusively triable by the Court of Session, committed the case to the learned Principal District and Sessions Judge, Salem. The learned Principal District and Sessions Judge taken the case on file in S.C.No.226 of 2012 and made over the same to the learned Sessions Judge, Mahila Court, Salem. The learned Special Judge, after completing formalities, framed charges against the appellant for the offence under Section 306 of IPC.

3 Before the trial Court, in order to prove the case of the prosecution, as many as 18 witnesses were examined as P.W.1 to P.W.18 and marked 32 documents as Ex.P1 to Ex.P32 and also one material object was exhibited as M.O.1. After completing examination of prosecution of witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the appellant/accused, he denied the same as false and pleaded not guilty. On the side of the defence, D.W.1 to D.W.4 were examined and Ex.D1 to Ex.D7 were marked and no material object was exhibited. The learned Sessions Judge, on completion of trial, after adverting to the materials placed on record and after hearing both the counsel, by judgment dated 10.01.2019, convicted the appellant/accused and sentenced him to undergo rigorous imprisonment for a period of ten years with fine of Rs.10,000/-, in default, to undergo simple imprisonment for a further period of six months.

4 Aggrieved against the said judgment of conviction and sentence, the appellant/accused has preferred this criminal appeal.

5 The learned counsel appearing for the appellant would submit that even as per the case of the prosecution there was enmity between P.W.1, husband of the deceased and the accused with regard to the disputed land. In such circumstances, there is every possibility for the prosecution to file a false case against the appellant. The appellant herein had filed civil suit in O.S.No.133 of 2009 against the deceased before the Principal District Munsif Court, Salem, in order to protect his rights over the disputed property. This exercise cannot be treated as an act of harassment of the deceased to commit suicide. In order to convict the appellant/accused for the offence under Section 306 of IPC, there must be a clear mens rea and it also requires an active part or direct act which leads the deceased to to commit suicide seeing no option and this act must have been intended to push the deceased into a position that she commits suicide.

5.1 Further, he would submit that there was an inordinate delay in filing the complaint and there was further



delay in sending the FIR and the complaint to the Court and the said delay has not been properly explained by the prosecution. There is every possibility that the case has been filed against the appellant/accused out of enmity and by concoction. There was a vital contradiction in respect of time of sending the dead body of the deceased to the Government Hospital, Salem. There was enough evidence to conclude that the original complaint has been suppressed and the present complaint produced before the Court is concocted one deliberately fabricated much later. Further, photographs taken at the scene of occurrence has not been marked before the Court, which will create considerable doubt in the case of the prosecution. Evidence of Investigating Officer in respect of time and place of preparation of inquest report is contradicting to the evidence produced before the Court.

5.2 The alleged suicide note of the deceased is concocted one, which was prepared later by making use of the signature of the deceased obtained in a blank paper at the time of filing of counter in the suit filed by the appellant. There was misunderstanding between P.W.1 and his wife the deceased and that being the situation, it cannot be considered that action taken by the appellant filing Civil Suit against the deceased will be the reason for the deceased to commit suicide. All the witnesses examined by the prosecution are only interested witnesses and they supported the case of the prosecution in a parrot version. There are material contradictions in the evidence of prosecution witnesses, which will go to the root of the case. The learned trial Judge failed to consider the above aspects and erroneously convicted the appellant, which warrants interference of this Court.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that there is civil dispute pending between the appellant and the deceased and her husband P.W.1. The appellant in order to defeat the right of the deceased over the disputed property, he concocted the documents as if, the deceased executed a lease deed and the said document was sent to Forensic Department for comparison of signature of the deceased, which resulted that the deceased did not execute any lease deed as alleged by the appellant. The property in dispute is belongs to the deceased and she sold the same to third party through power agent and the appellant, in order to cheat the deceased and extract money unlawfully, concocted the documents. Prosecution has clearly proved that the appellant concocted the alleged lease deed. The appellant has given continuous trouble to the deceased and abetted the deceased to commit suicide. The trial Court has rightly appreciated the evidence on record and the evidence of prosecution witnesses and convicted the appellant, which does not call for any interference of this Court.



7 Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record.

8 Case of the prosecution is that the appellant was working with P.W.1, who is the husband of the deceased and the deceased purchased a property on 24.04.2007 situated opposite to house of the appellant, for which the appellant acted only as broker. When the deceased tried to sell the same, the appellant not permitted her and threatened with dire consequences. The appellant further based on a forged document, has filed a civil suit, and given trouble to the vendor of the deceased and also to the deceased. Hence the deceased, due to frustration, committed suicide by hanging on 03.01.2010. Hence, P.W.1 lodged the present complaint against the appellant.

9 This Court, being an Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court.

10 P.W.1 is husband of the deceased, P.W.2 is mother and P.Ws.3 and 4 are brothers of the deceased and P.W.11 is colleague of P.W.1. P.W.10 is vendor and P.W.13 is the power agent of the deceased and all of them have spoken about the relationship between the appellant and the deceased and her husband P.W.1.

11 Admittedly there is civil dispute pending between the appellant and deceased and her husband P.W.1. From the oral and documentary evidence produced by the prosecution, this Court finds that except the fact that the appellant filed a suit against the deceased, no mens rea on the part of the appellant. To convict a person for the offence under Section 306 IPC, prosecution has to prove the fact that as no other option, the deceased has driven to take away her life and in this case, it is seen that the appellant filed the suit against the deceased and given some trouble regarding the disputed property. If at all the appellant has given trouble to the deceased, she has to face the same in the manner known to law before the Civil Court in the civil proceedings pending between them and for this reason, one should not go to the extreme level taking away the life. Evidence of P.W.1 itself clear that he advised the deceased to manage the trouble alleged to have given by the appellant.

12 This Court finds that prosecution has failed to prove the ingredient of Section 306 against the appellant. The deceased, instead of resolving her dispute before the Civil



Court, given weight to her frustration and hence it will be difficult to penalize the appellant under Section 306 of IPC. Hence, this Court is of the considered view that the appellant is entitled to acquittal extending the benefits of doubt.

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13 In fine, the criminal appeal is allowed and the judgment of conviction made by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.226 of 2012 dated 10.01.2019, is hereby set aside and the Superintendent of Jail concerned is directed to release the appellant immediately, if he is not required in any other case. The trial Court is directed to refund the fine amount, if any paid by the appellant.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, Mahila Court, Salem.
2. The Judicial Magistrate, No.4, Salem.
3. The Chief Judicial Magistrate, Salem (For Information)
4. The Superintendent of Jail, Central Prison, Coimbatore.
5. The Superintendent, Central Prison, Vellore.
6. The Inspector of Police, Veeranam Police Station, Salem.
7. The Public Prosecutor, High Court of Madras.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.36008/21

Cr1.A.No.68 of 2019

JPL(CO)
RGA(30/07/2021)