

Bail Slip

The Appellants/Accuseds namely 1.Pappa @ Sambu S/o Sasikumar 2.Nallu @ Nallammal W/O Madhu were directed to be released on bail as per order of this Court dated 28/06/2019 in Crl.M.P.No.7498 of 2019 in Crl.A No.336 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.336 of 2019

1.Pappa @ Sambu
2.Nallu @ Nallammal

... Appellants

.Vs.

The State
Rep.by Inspector of Police,
Kolathur Police Station,
Salem District,
Crime No.180 of 2013.

... Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to call for the records pertaining to the order in S.C.No.94 of 2014 dated 28.05.2019 on the file of the Mahila District Judge, Salem and set aside the same.

For Appellants : Mr.L.Infant Dinesh

For Respondent : Mr.R.Surya Prakash
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 28.05.2019 in S.C.No.94 of 2014 on the file of the Mahila Court, Salem.

2.According to the appellants, the respondent police registered a case in Crime No.180 of 2013 against the appellants/accused for the offence punishable under Section 306 IPC. Initially the case was registered against the appellants under Section 174 Cr.P.C. After Revenue Divisional Officer's (hereinafter referred to as 'R.D.O.') enquiry, the case was

altered for the offence under Section 306 IPC. After investigation, the respondent police filed a charge sheet before the learned Judicial Magistrate No.I, Mettur and the same was taken on file in P.R.C.No.21 of 2013.

3. The Judicial Magistrate No.I, Mettur, after considering the facts that the offences alleged to have been committed by the accused are triable by the Sessions Court has committed the case to the Sessions Judge, Salem and the same has been taken on file in S.C.No.94 of 2014 and made one to Mahila Court. After trial, the appellants were convicted for the offence under Section 306 IPC and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.50,000/- each, and in default, to undergo simple imprisonment for a period of six months. Challenging the said conviction and sentence, the appellants are before this Court.

4.1 The learned counsel for the appellants would submit that there is no prima facie materials as against the appellants to frame charges under Section 306 IPC. Further, the prosecution neither substantiated the case before the trial Court that the appellants had committed the offence under Section 306 IPC, nor established the main ingredients of Section 107 or 306 IPC. The learned Sessions Judge, failed to consider the ratio laid down by the Hon'ble Supreme Court in various decisions that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit the offence that soon before committing suicide there was an inducement. Either the family members or the in-laws of the victim, whoever abets to commit suicide, shall be punished, however, in this case there is no specific materials as against the appellants.

4.2 The learned counsel for the appellants would further submit that originally, the case was registered under Section 174 Cr.P.C., since the victim alleged to have committed suicide by hanging herself. Though R.D.O enquiry report does not reveal that the appellants instigated or induced the victim to commit suicide, he has simply given a finding that due to quarrel with the neighbours, the victim said to have committed suicide. Further, R.D.O had not named the appellants or any other persons, who have quarreled with the victim, had instigated the victim to commit suicide.

4.3 Admittedly in this case, the husband of the victim is a dumb person and the victim is the second wife and his first wife left the matrimonial home, due to the harassment of her husband and in laws, but, the investigating officer had not investigated the said fact. The learned counsel further submitted that in this case neither the parents of the victim nor her husband or in laws have filed any complaint against these appellants. The

de facto complainant one Palanisamy, who was examined as P.W.1 had only named the appellants. Further, there is no suicide note or dying declaration in this case. Only based on the complaint given by P.W.1, who is the neighbour of the deceased, the case was registered against the appellants.

4.4 Further, P.W.1 in his chief examination had stated that there was a quarrel between the appellants and the deceased with regard to the illegal relationship between the deceased and the husband of the first appellant and the son of the second appellant. In this regard, the deceased had already requested P.W.1 to question the appellants about the said facts. On the date of occurrence, after the quarrel, the deceased had committed suicide and she was taken to hospital for treatment, but, on 24.04.2013, the victim died. Subsequently, the doctors demanded a complaint for postmortem and hence, P.W.1 filed the complaint against the appellants. However, during the cross examination, he had stated that he had not seen any quarrel, rather that was only hearsay. Further, on the second day itself, the police had enquired the incident, but, no case was registered. Further, he has deposed that he was not aware of the civil case in O.S.No.274 of 2008, which was filed by the appellants family with regard to the pathway dispute and also deposed that father-in-law and mother-in-law of the deceased were already enquired by the police immediately after the incident.

4.5 The learned counsel for the appellants would further submit that during the R.D.O enquiry nothing was brought on either by the investigating officer or any of the villagers that the appellants quarreled with the victim and due to which she committed suicide. Further, R.D.O also has not spoken anything against the appellants. Therefore, in the absence of the same, only based on the evidence of P.W.1, the learned Sessions Judge convicted the appellants without any corroboration, which is against the principles of criminal jurisprudence. Hence, the prosecution has failed to establish the case beyond all reasonable doubts.

4.6 In support of his contention, the learned Counsel for the appellants relied upon the judgment of the Hon'ble Supreme Court in State of West Bengal Vs. Indrajit Kundu and Others reported in 2019 (10) SCC 188. The learned Sessions Judge failed to consider the fundamental jurisprudence that the prosecution has to prove the case beyond all reasonable doubts. In this case there is no iota of evidences available on record to establish that the appellants have committed the offence under Section 306 IPC.

5. The learned Government Advocate (Crl.Side) would submit that the appellants are the neighbours of the deceased. On 06.04.2013, the appellants quarreled with the deceased alleging that she was having illegal relationship with the husband of the first appellant and son of the second appellant and also abused her with filthy language. Due to which, the deceased attempted to commit suicide and succumbed to injuries. Thereafter, the deceased was taken to the hospital for treatment and later she died on 24.04.2013. Subsequently, a case was altered against the appellants for the offence under Section 306 IPC. He would further submit that at the time of deposition, P.W.1 clearly stated that the appellants questioned the deceased about the illegal relationship i.e., the deceased was having illegal intimacy with the husband of the first appellant and son of the second appellant. Hence, the deceased committed suicide by hanging herself. Further, one of the accused used abusive language and told the deceased 'to go and die'. All these facts driven the victim to commit suicide. Though initially the case was registered under Section 174 Cr.P.C, subsequently, after investigation, the prosecution had come to the conclusion that the appellants quarreled with the deceased and also abused her in filthy language, due to which, the deceased committed suicide. P.Ws.4 and 5, who are the father-in-law and mother-in-law of the deceased also corroborated the same. Therefore, the witnesses have clearly spoken that due to the quarrel between the appellants and victim, the victim committed suicide. Hence, the prosecution has established the case beyond all reasonable doubts. There is no merit in this appeal to allow the same.

6. Heard the learned counsel for the appellants and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

7. The case of the prosecution is that the husband of the deceased is a dumb person and the deceased had illegal intimacy with the husband of the first appellant and son of the second appellant. For which, the appellants quarreled with the deceased, due to which, she attempted to commit suicide and succumbed to death. After the death of the deceased, the respondent police registered the case under Section 174 Cr.P.C against the appellants, wherein, it was alleged that the appellants abetted the deceased to commit suicide. Subsequently, the case was altered into Section 306 IPC. During the investigation, the statement of the witnesses were recorded under Section 161 Cr.P.C. Thereafter, charge sheet was laid before the learned Sessions Judge and the appellants were convicted and sentenced for the offence under Section 306 IPC.

8. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 17 witnesses were examined as P.W.1 to P.W.17 and 16 documents were marked as Ex.P.1 to Ex.P.16, besides, material objects as M.O.1 and M.O.2 were exhibited on its side. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C and incriminating circumstances found out in the evidence of prosecution witnesses, but, the accused had come with the version of total denial and stated that they have been falsely implicated in this case. On the side of the defence, one witness was examined as D.W.1 and four documents were marked as Exs.D1 to D4.

9. The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the accused/appellants are guilty and awarded sentences, as referred to above, which is challenged in this Criminal Appeal.

10. It is the specific case of the prosecution that due to quarrel made by the appellants, the deceased committed suicide. Admittedly, in this case neither the deceased left any suicide note nor given any dying declaration, even though, the occurrence happened on 06.04.2013 and the deceased died on 24.04.2013. The prosecution has stated that after the occurrence on 06.04.2013, the deceased was admitted in the hospital and she was unconscious and hence, dying declaration could not be obtained from the deceased. Further, the parents or husband or in laws of the deceased had not given any complaint against the appellants. The complaint was preferred only by the neighbour of the deceased and the same was registered under Section 174 Cr.P.C. After R.D.O enquiry, the case was altered into Section 306 PC.

11. Further, the R.D.O., who was examined as P.W.14, enquired the witnesses and submitted a report before the investigating officer stating that the deceased committed suicide only due to dowry harassment. Further, in his cross examination he has clearly stated that in the enquiry, none of the witnesses have spoken about the nature of the quarrel. Further, the R.D.O report does not reveal the reasons for the quarrel and who had quarrelled with the deceased. Therefore, the R.D.O enquiry report will not help the prosecution to bring the appellants into the case for the offence under Section 306 IPC. After 19 days from the date of the incident, the complaint was filed by P.W.1, who is the neighbour of the deceased. It reveals that after the incident, the deceased survived for 19 days in the hospital, however, no complaint was filed against the appellants or any other persons. At the time of postmortem, the hospital authorities insisted to file the complaint, in order to comply

the formalities and hence, P.W.1 filed the complaint. Since the death of the deceased was under suspicious, the matter was referred for R.D.O enquiry. During the trial, P.W.14 R.D.O., has not stated that the appellants suspected the deceased and quarrelled due to which she committed suicide.

12. During the cross examination of P.W.1, he has deposed that he had not seen the incident directly. Further, none of the witnesses have spoken that there was an illegal intimacy between the deceased and the appellants' husband/son, respectively. Even though, the husband of the deceased who is interested and affected person, but, he has not preferred any complaint. However, the prosecution has not established the case that the deceased had illegal intimacy with the husband of the first appellant and son of the second appellant.

13. On reading of the R.D.O report, it does not reveal with whom the deceased had quarreled. But, the facts remains that the deceased committed suicide after 19 days of the treatment she died and in between no complaint was made against the appellants. At the time of postmortem, in order to complete the formalities, P.W.1 preferred the complaint. Except P.W.1, none of the witnesses have stated that the appellants suspected the character of the deceased. Further, P.W.1 admitted in his cross examination that he has not seen the quarrel between the appellants and the deceased, directly. Further, the prosecution has not investigated the matter in the angle as to whether, the deceased was having any illegal intimacy with the husband/son of the appellants. If the deceased had illegal intimacy with the husband of the first appellant, naturally the wife will not tolerate the same. Even otherwise, if there is any illegal relationship between them, merely, made a quarrel, the deceased herself got insulted by the appellants and lost her reputation in the village and she has decided to commit suicide that may not be punishable under Section 309 IPC. Hence, the prosecution has failed to establish the same.

14. It is an admitted fact that the deceased committed suicide, subsequently, she was admitted in the hospital and died after 19 days. At the time of postmortem the doctor also stated that the death is not a natural death, he had pointed out that a ligature mark was found on her neck, therefore, the death of the deceased was only by committing suicide. But, the prosecution has not clearly established for what reason, the deceased committed suicide. Further, the R.D.O has clearly stated that there was a quarrel between the deceased and the neighbours and therefore, she committed suicide. However, P.W.1 has stated that the deceased told to him that the appellants quarreled with her, and hence, she committed suicide, the same was not corroborated with any other evidence. Therefore, the

prosecution had not established the case as to whether the deceased had illegal intimacy with the appellants' husband/son and due to which, they quarrelled with the deceased, hence, she attempted to commit suicide. In the absence of the same it is unsafe to convict the accused.

15. It is well settled proposition of law, in criminal cases, the prosecution has to prove its case beyond all reasonable doubt. The accused need not prove his innocence and he presumed to be an innocent till the end of the trial. From the materials available on record and the evidence of the prosecution witnesses, this Court finds that the Appellate Court as a fact finding Court has to re appreciate the entire evidence independently.

16. In the light of the above facts, this Court finds that the prosecution has not proved the case beyond all reasonable doubt. The Sessions Court also not pointed out that the prosecution has explained the reasons for the quarrel, either prior to or at the time of the commission of an act, the appellants induced the deceased to commit suicide either on the date of occurrence or soon before the date of occurrence due to which, the deceased had taken hasty step to take away her life. There is no eye witness to prove that in what way, the appellants insulted, abused or induced the deceased and therefore, she had no other option except to take extreme step, in order to safe guard her reputation in the village.

17. Under these circumstances, this Court finds that the trial Court has failed to consider the fundamental jurisprudence that the prosecution had not proved its case beyond all reasonable doubts. This Court finds that there is no cogent and convincing evidence to come to the conclusion that the appellants had induced the deceased to commit suicide. Therefore, there is a perversity in the findings of the trial Court.

18. In fine, this Criminal Appeal is allowed. The conviction and sentence passed in S.C.No.94 of 2014 by the learned Sessions Judge, Mahila Court, Salem is hereby set aside and the appellants are acquitted. Bail bond executed by them shall stand cancelled. Fine amount paid by them is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahila Court, Salem.

2.The Inspector of Police,
Kolathur Police Station,
Salem District.

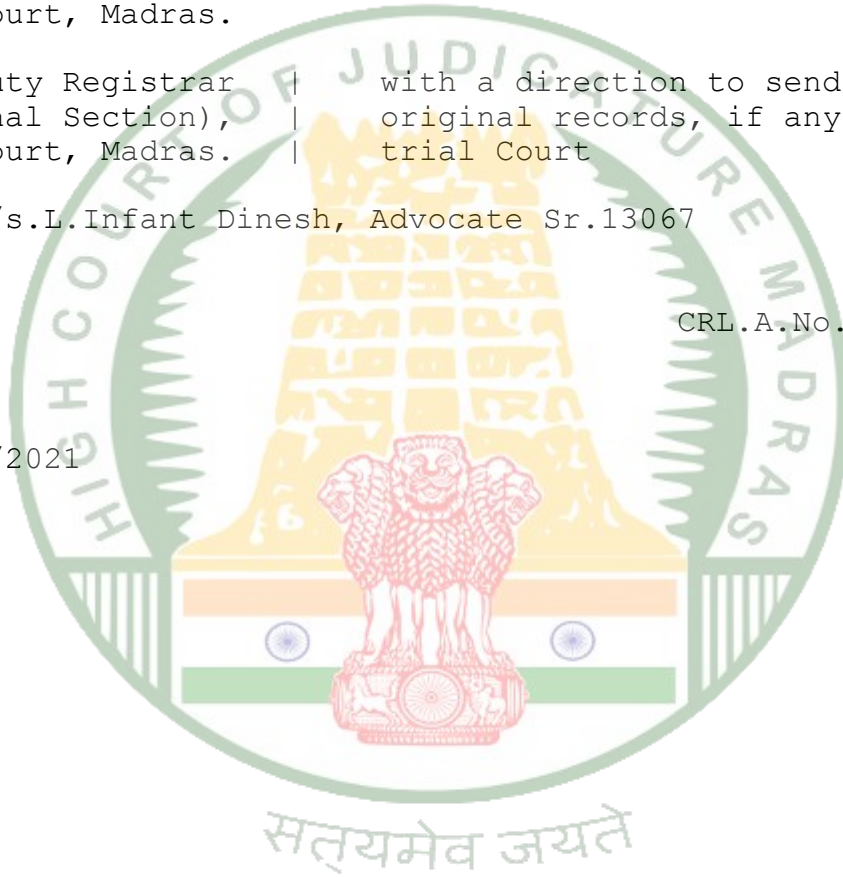
3.The Public Prosecutor,
High Court, Madras.

4.The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, if any, to the
High Court, Madras. | trial Court

+lcc to M/s.L.Infant Dinesh, Advocate Sr.13067

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