



WEB COPY

Bail Slip

The Accused namely Mr.K.Thirupathi S/o.Karupanan was released on Bail in Crl.MP.No.15625 of 2019 in CrA.No.744 of 2019 dated 19.12.2019 against the SC No.46 of 2017 on the file of the Mahalir Fast Track/2nd Additional Sessions Judge of Erode dated 15.05.2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.04.2021
Delivered on : 09.07.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.744 of 2019

K.Thirupathi ..Appellant/Accused

-Vs-

State
Rep. By The Inspector of Police
Erode North Police Station
Erode District
(Crime No.66/2015) ..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, as against the order of conviction made by the learned Mahalir Fast Track/2nd Additional Sessions Judge of Erode in S.C.No.46 of 2017 dated 15.05.2018.

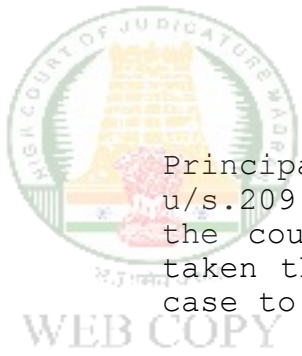
For Appellant : Mr.K.Thilageswaran

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

JUDGMENT

This Criminal Appeal has been filed against the judgment of conviction made by the learned Mahalir Fast Track/2nd Additional Sessions Judge of Erode in S.C.No.46 of 2017 dated 15.05.2018.

2. The respondent police registered the case against the appellant in Crime No.66 of 2015 for offence under Section 174 Cr.P.C. After completing the investigation, laid charge sheet before Chief Judicial Magistrate, Erode. He has taken the charge sheet on file in P.R.C.No.8 of 2017. After completing the formalities u/s.207 Cr.P.C., committed the case to the



Principal Sessions Judge, Erode, to proceed with the case u/s.209 Cr.P.C. Since the offence is exclusively triable by the court of Session, the learned Principal Sessions Judge, taken the case on file in S.C.No.46 of 2017 and made over the case to the Mahila Court, Erode.

3. The learned Special Judge, after completing the formalities framed the charge against the appellant for offence under Section 306 IPC. After framing charge, during trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined as P.W.1 to P.W.16 and marked 23 documents as Ex.P.1 to Ex.P.23 and no Material Object was marked. After completing the evidence of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant and questioned under Section 313 Cr.P.C. The appellant denied the same as false and pleaded not guilty. On the side of defence, no oral and documentary evidence was produced.

4. On completion of trial, after hearing of the arguments advanced on either side and considering the materials on record, the trial court convicted the appellant for the offence under Section 306 IPC and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- and in default to undergo one year simple imprisonment. Challenging the said judgment of conviction and sentence, the appellant/accused has preferred the present appeal before this court.

5. The learned counsel for the appellant would submit that there is a delay in registering FIR and the delay is inordinate delay and the same has not been properly explained. The alleged dying declaration was said to be obtained by the Judicial Magistrate on 07.01.2015 at about 10.40 p.m., and the conviction is made solely based on the alleged dying declaration of the deceased is unsustainable in the eye of law. The brother of the deceased was examined as P.W.13 who deposed that the deceased was able to speak on 09.01.2015 at about 2.00 to 2.30 p.m. Therefore, the statement allegedly said to have recorded by P.W.14 by Special Sub Inspector on 07.01.2015 create reasonable doubt over the case of the prosecution. The deceased was alleged to have suffered 90% burn injuries and did not even put thumb impression and the alleged endorsement by left toe ought not to have relied on by the trial court. The R.D.O., who conducted the enquiry was examined as P.W.5 and as per her report, there was no dowry harassment. Even the statement of the deceased taken on its entirety does not contemplate offence under Section 306 IPC. Therefore, the order of conviction of the learned Special



6. Even as per the prosecution, the appellant doused the fire over the deceased and she was immediately taken to hospital, therefore, the incident of instigation of committing suicide does not arise. Even after death of the deceased, FIR dated 30.01.2015 is stated to have registered based on the alleged statement made by the deceased on 07.01.2015 and it was only under section 174 Cr.P.C. Being so, without any additional evidence, offence has been altered into Section 306 IPC. None of the independent witnesses have supported the case of the prosecution. The order of conviction made by the trial court based on the unsustainable statement recorded u/s.164 Cr.P.C., by the Judicial Magistrate is liable to be set aside. Therefore, the trial court failed to consider the fact that the prosecution failed to establish its case beyond reasonable doubt. Only the statement recorded from the deceased while she was admitted in the hospital, was taken as corroborative and so no conviction can be passed based on such uncorroborative evidence. Therefore, the trial court failed to look into the legal as well as factual aspects and wrongly convicted the accused u/s.306 IPC, which warrants interference.

7. The learned Government Advocate (Criminal Side) would submit that the appellant is the husband of the deceased. Against the will and wish of the parents, the deceased married the appellant and he set independent family after the marriage and he has not supported his family and not provided the requirements, but driven his wife to bring money from her family. He used to drink alcohol and not going for work and not supported the family. He also pledged all the jewels of the deceased and consumed alcohol. Frequently he scolded his wife/deceased and even beaten her. At some point of time, he frequently scolded and beaten and also uttered a word "go and die". The deceased fall on love with the appellant and eloped with him and without informing her parents, she married the appellant. But the appellant was not going to work and provide any household things. She was not even provided food and further he pledged her jewels. On 06.01.2015, both the appellant and the victim went to appellant's parents house. Since the appellant married the deceased against his parents wish, when he asked his share in the property, the parents of the appellant refused to give his share. The appellant and the deceased returned on 07.01.2015. Since the appellant is unable to get the property, he beaten her and driven her to commit suicide. So he has abetted the deceased to commit suicide. The victim after sustaining the burn injury, was admitted in the hospital. The Judicial Magistrate obtained the statement from the victim. Subsequently she succumbed to burn injuries. The case was registered.



8. The learned Government Advocate (Criminal Side) further submits that both the appellant and the deceased were living separately after their marriage and at times, the girl contacted the mother and she informed the behaviour of the appellant. Therefore, the statement of the victim and also the evidence of the mother and evidence of doctor shows that the deceased died due to burn injuries and she herself poured diesel and set fire on her and attempted to commit suicide. She sustained burn injuries and was admitted in the hospital. Subsequently, she died. The doctor one who conducted autopsy on the deceased opined that the deceased died due to burn injuries and shock. Therefore, the prosecution has proved the case beyond reasonable doubt. The appellant is the one who induced the victim to drive her to commit suicide. Therefore, the trial court has rightly appreciated the facts and convicted the accused and there is no reason to disbelieve the evidence given by the deceased while she was admitted in the hospital. Hence, no merit in the appeal and the appeal is liable to be dismissed.

9. Heard and perused the records.

10. This Court is the Appellate Court and a fact finding court. It has to re-appreciate entire evidence for giving independent finding.

11. The case of the prosecution is that the deceased married the appellant against the wish and will of her parents. After marriage, he did not support the family but consumed alcohol. The appellant has pledged all the jewels of the deceased and consumed alcohol. Frequently he scolded his wife/deceased and beaten her. At some point of time, he beaten and also uttered words "go and die". The deceased fall on love with the appellant and eloped with him without informing her parents and got married the appellant. He pledged her jewels. Both appellant and victim went to appellant's parents house for asking his share in the property. Since the appellant married the deceased against their wish, the parents of the appellant refused to give his share. After returning from his parents house, the appellant scolded the deceased saying that since he married her against their will and wish, his parents refused to give share. Since he was unable to get the property, he beaten her and driven her to commit suicide. The deceased poured diesel and put fire on her and succumbed to burn injuries. Her statement was recorded by the Judicial Magistrate.

12. The trial court framed a charge against the appellant under Section 306 IPC. In order to prove the charge against



the appellant, the prosecution examined totally 16 witnesses, out of which, PW.4 is Judicial Magistrate, who recorded the statement of the deceased while taking treatment in the hospital who sustained burn injuries. After giving statement, after some time, she died and so it can be treated as dying declaration. The evidence of P.W.4-Judicial Magistrate clearly shows that at the time of recording statement, other than the Magistrate, doctor also certified the mental status of the victim at that time, that though she sustained 90% of injuries, she is capable of speaking, which clearly shows that the declarant was in a fit state of mind. The doctor who examined her, certified that patient was conscious and oriented which shows that the deceased was in a fit state of mind. Therefore, in the presence of doctor, Judicial Magistrate recorded the statement from the victim. The said statement was marked as Ex.P.3. Ex.P.3 statement is given by the victim herself and in this case, there is no eye witness. Therefore, the victim girl stated the reason for committing suicide and that she set fire on her.

13. A reading of the evidence of P.W.4 Judicial Magistrate and also the doctor who examined and certified about the victim girl's mental status while recording her statement by the Judicial Magistrate was examined as P.W.6. A combined reading of evidence of P.W.4, P.W.6 and Ex.P.3 would clearly go to show that due to the reasons of torture given by the appellant, the deceased committed suicide.

14. A reading of Ex.P.3 would go to show that the deceased has clearly stated that for the past eight months prior to the date of occurrence, there was quarrel between the appellant and the victim. Prior to the date of occurrence, the appellant went to his parents house and he came back and shouted at the deceased and quarreled with her. On the date of occurrence, from the morning, he told that "you go and die, you go and die. " Therefore, the victim poured diesel on her and set fire. Victim in her statement, has stated that there was a quarrel in between them. Appellant beaten her and asked her to die. Though mother of the victim girl was examined as P.W.1, she has narrated that the victim girl was one of her daughters and that her other daughters are living separately and mother of the victim girl is living separately. The victim was missing on 02.06.2014 and thereafter she did not know about her whereabouts. Some time in the year 2015, she came to know that the victim tried to contact her through phone through house owner. At that time, she came to know that the victim eloped with the appellant. Without their consent, the appellant took the victim girl and eloped and set up a separate house. At the time of missing, the victim girl was having jewellery of 1 ½ sovereign chain and ¾ sovereign jimiki and two grams ring. After the marriage, the appellant taken the jewels and sold it and he consumed alcohol and he did not

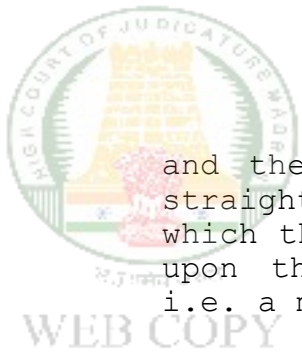


go to work and not provided any provision or other requirements to run the family. Frequently the appellant scolded her. On 06.01.2015, appellant and the deceased went to appellant's parents house. The appellant asked his parents to give his share from the family property. Since the appellant got married without their consent, his parents refused to give him any share. When the appellant and the deceased returned on 07.01.2015, appellant shouted her and shown his angriness, beaten her and scolded that go and die.

15. The deceased fall in love with the appellant and without consent of her parents, eloped with the appellant and got married him. But the appellant as dutiful husband, not taken care of her and sold her jewelleries and consumed alcohol and used to quarrel with her and beaten her. Prior to the date of the occurrence, he driven the victim to commit suicide. From the evidence of P.W.1 mother and the doctor who conducted post mortem would go to show that the death of the victim is unnatural and she died due to shock and hemorrhage.

16. Therefore, on a combined reading of the evidence of the witnesses available on record and the statement of the victim recorded by the Judicial Magistrate on the one hand and the evidence of P.W.4/Judicial Magistrate that he went to record the statement based on the certificate given by P.W.6 doctor who medically examined the victim girl, certified that the victim girl was conscious and oriented, on the other hand, would go to show that Ex.P.3 is the statement recorded from the victim girl in fit state of mind. Therefore, the statement of the victim girl and medical evidence clearly show that the death of the victim is unnatural and soon before committing suicide, the appellant beaten her and also uttered the word "go and die". Therefore, it is clear that the appellant said "go and die", which would clearly go to show that the appellant has committed the offence u/s.306 IPC and therefore, the trial court has rightly convicted the appellant.

17. The contention of the learned counsel for the appellant regarding delay in filing FIR is concerned, as stated by the trial court, the appellant and the victim alone were living after their marriage and the parents of the victim not even aware of the occurrence and know the residence of the victim. After the occurrence, neighbour of the victim informed to the mother of the victim. Subsequently, mother lodged the complaint. Victim sustained burn injuries and admitted in the hospital. Immediately no one was nearby to give complaint. Subsequently only, mother of the victim knowing about the occurrence, given complaint. Therefore, the delay in lodging the complaint is not fatal to the case of the prosecution. Mere delay in lodging FIR is not fatal. If the delay is specially explained and when the delay is not inordinate



and the version of the mother of the victim is honest and straightforward, the delay will not be fatal. The principle on which the dying declarations are admitted in evidence is based upon the legal maxim "Nemo meritorius prasumitur mentire" i.e. a man will not meet his maker with a lie in his mouth.

18. In this case, the victim girl after sustaining burn injuries was taken to hospital for taking treatment. The Investigating Officer has made arrangement to record statement from her by the Judicial Magistrate. The Judicial Magistrate also went to the hospital and also the doctor examined the victim. At the time of recording, doctor also certified that patient was conscious and oriented which means she was capable of giving the statement. The doctor certified about the condition of the victim and then statement of the victim was recorded. What is essential is that the person who recorded dying declaration was satisfied that the declarant was in a fit state of mind. Normally, a person on the verge of death will not implicate somebody falsely. In this case, doctor given certificate about the fit state of mind of the victim. Thereafter, Judicial Magistrate satisfied with the same and obtained statement from the victim. A dying declaration made voluntarily with truthfulness and free from any doubt can be the sole basis for conviction.

19. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason, the Court also insists that the dying declaration should be of such nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration.

20. This court from the evidence of Judicial Magistrate/P.W.4 ensures that the victim was in fit state of mind. The doctor also certified the same. Therefore, this court believes that the court has to come to the conclusion that the prosecution has proved the case beyond reasonable doubts. The appellant is the one who has committed the offence u/s.306 IPC and there is no reason to discard the evidence of the prosecution. There is no merit in the appeal. Since the victim believed the appellant, she left her parents house and married the appellant, but the appellant was not a dutiful



husband and failed to extend his support to victim. Instead he gave torture to her and driven her to commit suicide. Therefore, this court does not find any mitigating circumstances to reduce the sentence. Therefore, the appeal deserves to be dismissed. Accordingly, the criminal appeal is dismissed. The trial court is directed to take appropriate steps to secure the presence of the appellants to undergo the remaining period of sentence.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

nvsri

To

1. The 2nd Additional Sessions Judge,
Mahalir Fast Track, Erode.
2. The Inspector of Police
Erode North Police Station
Erode District
(Crime No.66/2015)
3. The Chief Judicial Magistrate, Erode.
4. The Principal Sessions Judge, Erode.
5. The Superintendent, Central Prison, Trichy.
6. The Section Officer,
Criminal Section,
High Court, Madras.
7. The Public Prosecutor,
High Court, Madras.

CrI.A.No.744 of 2019

RK(CO)
GMY(06/08/2021)