



BAIL SLIP

The Petitioner/Accused/Viz., Manoharan, S/o.M.G.Perumal was released on Bail as per the Order of this Court dated 26/02/2020 in Crl.M.P.No.17686 of 2019 in Crl.A.No.825 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.A.NO.825 OF 2019

AND

CRL.M.P.NO.9116 OF 2021

Manoharan,
S/o.M.G.Perumal.

... Appellant/Accused
No.1

Versus

The State Rep. by
The Inspector of Police,
Burgur Police Station,
Krishnagiri District.
(Crime No.68 of 2012)

... Respondent/Complainant

PRAYER:-

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District dated 11.11.2019 in S.C.No.43 of 2018.

For Appellant : Mr.Parthiban
For Mr.E.Kannadasan

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate
(Criminal Side)



J U D G M E N T

The present Criminal Appeal has been filed by the appellant to set aside the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District dated 11.11.2019 in S.C.No.43 of 2018.

2. The appellant herein is arrayed as first accused in the above referred case. He stood charged for an offence under Section 302 of IPC. The other 3 accused, who are arrayed as A-2 to A-4 are tried for the offence under Section 302 r/w 109 of IPC. By a judgment dated 11.11.2019, the learned Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District, convicted the appellant under Section 306 of IPC and sentenced to undergo Rigorous Imprisonment for seven 7 years and to pay a fine of Rs.20,000/-, in default to undergo Rigorous Imprisonment for 9 months. Further, the other accused are all acquitted from the charge under Section 302 r/w 109 of IPC.

3. Challenging the said conviction and sentence, the first accused/appellant is before this Court, by way of filing the present Criminal Appeal.

4. The case of the prosecution, in brief, is as follows;

4.1. P.W.6-Munusamy is the father of the deceased Rekha and P.W.1-Selvarani is her mother. Before the occurrence, both the appellant and the deceased fell in love with each other. Later, after lodging a complaint before the Hosur Women Police Station, the appellant along with accused nos.2 and 3 approached the parents of the deceased and fixed the date for his marriage with the deceased. However after sometime, the appellant refused to marry the deceased saying that she is an illiterate lady. Before the said occurrence, the deceased became pregnant and afterwards, she aborted the foetus. In the said sequence of events, during the relevant point of time around 12.00 noon, while at the time P.W.4-Murugan and one Manogaran were found available, the deceased Rekha came there and told to P.W.4 as due to the misunderstanding with the first accused, she consumed poison, and requested to save her life. After hearing the same, P.W.4 admitted the deceased in the Krishnagiri Government Hospital, but on the next day, i.e. 23.02.2021 around 10.00a.m. the said Rekha had died. Immediately, P.W.4 informed the death of Rekha to the parents of Rekha and her relatives. After hearing the news from P.W.4, P.W.1 Selvarani came to the Hospital and after seeing the dead body of the deceased Rekha lodged a complaint [Ex.P.1] before P.W.9.



4.2. P.W.9-Senthamarai, the then Sub-Inspector of Police, Burgur, on receipt of the complaint, registered a case in Crime No.68 of 2012 under Section 174 Cr.P.C. The printed F.I.R. was marked as Ex.P.6. After registration of the F.I.R., she visited the scene of occurrence and in the presence of witnesses, she prepared an Observation Mahazar and Rough Sketch under Ex.P.2 and P.7 respectively. She examined the witnesses and recorded their statements. During investigation, she found out that before the occurrence, the appellant herein being the lover of the deceased demanded to pay a dowry of Rs.60,000/- for solemnising the marriage with him. In this regard, both the appellant and the deceased decided to consume poison and in order to commit the same, both of them went to the Nizar gate area and by using two tumblers, they mixed water with poison. Later, after consuming the poison by the deceased, the appellant thrown away the poison. After knowing the same, the deceased Rekha abused the appellant and assaulted on his cheek, and then only P.W.4 admitted Rekha in the hospital. In the meanwhile, after investigating the case as above, P.W.9 prepared an inquest report under Ex.P.8. Further, she altered the Section of law into Section 306 of IPC and submitted the alteration report to the Court. The alteration report submitted by the Sub-Inspector of Police was marked as Ex.P.9.

4.3. After completing the above formalities, she submitted an application before the Doctor attached with Government Hospital, Krishnagiri, for conducting postmortem over the dead body of the deceased Rekha. P.W.7-Jaganmohan, the Doctor, attached with Government Hospital, Krishnagiri, on receipt of the requisition given by the Sub-Inspector of Police, conducted postmortem and found the following injuries on the dead body of the deceased:

"No External injuries.
Internal injuries;
Ribs intact - 200 ml blood of weighed 300gms.
Hyoid bone intact.
Brownish fluid in stomach seen.
Liver - 1200 gms congested.
Spleen - 90 gms weighed congested.
Kidneys 120 gms exact.
Skull intact.
Brain 1320 gms weight normal."

4.4. He collected viscera and sent the same for chemical examination. On receipt of the viscera, P.W.10-Geetha, examined the same and she found that there was a organic poison in the viscera. In this regard, she issued a report under Ex.P.4 and after receipt of the same, P.W.9 submitted the case records to P.W.11 for further investigation.



4.5. P.W.11, the then Inspector of Police, on receipt of the case records from P.W.9, visited the scene of occurrence and examined the witnesses. Since the witnesses gave statement as stated before P.W.9, the statement given by those witnesses, are not recorded. Afterwards, since he was transferred from the said office, investigation was continued by P.W.12.

4.6. P.W.12, the then Inspector of Police, after examining the chemical examiner received the chemical examiner report and filed the Final Report alleging that the accused and others are liable to be convicted under Section 302 r/w 109 of IPC.

5. Based on the above materials, the trial Court framed charges under Sections 306 and 302 r/w 109 of IPC and all the accused denied the same. In order to prove their case, on the side of the prosecution, as many as 12 witnesses were examined as P.W.1 to P.W.12 and 12 documents were exhibited as Exs.P.1 to P.12.

6. Out of the said witnesses, P.W.1-Selvarani, is the mother of the deceased. She knows the other accused and the family members of the appellant. She spoken about the occurrence as previous to the occurrence, both the deceased and the appellant fell in love with each other. Before the marriage, the accused threatened the deceased as he is going to marry an educated lady. One day due to the request made by the deceased, she came and found that the deceased became pregnant. However, due to the intervention of the deceased, the same was aborted. According to her, for the past 12 years, both the deceased and the appellant lived together as husband and wife. In the meanwhile, one day, she came to the knowledge that the deceased consumed poison, came to the occurrence place and after seeing her daughter, lodged a complaint.

7. P.W.2-Gopi, who is the cousin brother of the deceased and P.W.3-Indirani is the sister of P.W.1, gave evidence in support of the evidence given by P.W.1.

8. P.W.4-Murugan, is the person residing in the same village. After came into the knowledge of the occurrence, he admitted the deceased in the hospital.

9. P.W.5-Saradha is the house lady of the deceased speaks about the family of the deceased and the appellant. According to her, she advised P.W.4 to admit the deceased in the hospital.

10. P.W.6-Munusamy is the father of the deceased gave evidence in support of the evidence given by P.W.1.



11. P.W.7-Jaganmohan is the Doctor attached with Government Hospital, Krishnagiri, spoken about the antemortem injuries sustained by the deceased and also about the cause of death.

12. P.W.8-Sophia Lithvin, is the constable, who handed over the dead body of the deceased for postmortem.

13. P.W.9-Senthamarai, the then Sub-Inspector of Police speaks about the receipt of complaint from P.W.1, registration of the case and investigation.

14. P.W.10-Geetha, is the Chemical Examiner spoken about the examination of viscera collected from the dead body.

15. P.W.11 and P.W.12 are the police officers spoken about the investigation made in this case and about the arrest of accused and also about the filing of the final report.

16. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false and on their side, none examined as defence witness.

17. The learned Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri, after perusing all the above materials and on considering the arguments advanced by either side, convicted and sentenced the appellant as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court with this appeal.

18. I have heard Mr.Parthiban, learned counsel for Mr.E.Kannadasan appearing for the appellant and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl. Side) appearing for the State. I have also perused the records carefully.

19. The learned counsel appearing for the appellant would contend that the evidence given by the witnesses, who are all examined on the side of the prosecution, did not say about the abetment committed by the appellant. He would further submit that after framing the charge for the offence under Section 302 of IPC, without seeing the contents of the charge, the trial Court convicted the accused under Section 306 of IPC. Here, it is a case, though the prosecution has proved that the death of the deceased is due to the consumption of poison, in order to prove the offence under Section 306 of IPC, it would necessary for the prosecution to show that the abetment which have been committed by the appellant. But in this case, nothing was shown through the prosecution witnesses as during the relevant point of time, the appellant abetted the deceased for committing the suicide.



20. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent police would contend that the evidence given by the prosecution witnesses will prove that during the relevant point of time, the appellant abetted the commission of suicide. According to him, interference of this Court in the judgment rendered by the trial Court, is not necessary.

21. I have considered the rival submissions made on either side and perused the records carefully.

22. Admittedly, here, it is a case, after admitting the deceased in the hospital, she was alive for nearly 24 hours, in the interregnum period, for the reasons best known to the Doctors and the Police Officers, no dying declaration has been recorded from the deceased. Apart from that, it is the case of the prosecution that, immediately after came into the knowledge that the deceased consumed poison, P.W.4 admitted her in the hospital. Therefore, in the said circumstances, it would probable for the deceased as well as to the P.W.4 to say about the details to the Doctor as under what circumstances, she consumed poison. But, here, it is a case, the respondent police has not recovered the Accident Register Copy, which has been prepared at the time of admitting the deceased in the hospital. Therefore, non-filing of the said document, is nothing but a fatal to the prosecution.

23. The another circumstances now narrated by the prosecution is that, as per the investigation during the relevant point of time, both the deceased and the appellant decided to consume poison and later, while at the time of consuming poison, the appellant making a drama and thrown away the poison. On the other hand, the deceased consumed the same. In this regard, none of the witnesses on the side of the prosecution gave evidence as before the occurrence both the deceased and the appellant are in the occurrence place. Even the deceased has not stated anything before P.W.4.

24. P.W.4, who is the witness, saw the deceased gave evidence before the trial Court that after seeing the deceased, she told to him that she consumed poison. In otherwise, she never stated about the accused. In the said circumstances, assuming that the appellant and the deceased are having the family dispute, it would not sufficient to conclude the occurrence as during the relevant point of time, the accused abetted the deceased for committing the suicide. In respect to the abetment, Section 107 of IPC reads as follows;



WEB COPY

"107. Abetment of a thing.- A person abets the doing of a thing, who-

First.-Instigates any person to do that thing; or
Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing."

25. Now, applying the evidence given by the prosecution witnesses with the contents of the above provisions, the witnesses examined on the side of the prosecution have not stated about the conspiracy for the doing of that thing, or about the illegal omission takes place.

26. In a case of STATE OF RAJASTHAN vs. KESA reported in 2002 CrI.L.J.432 (Raj), in respect of the ingredients of Section 306 of IPC, it has observed as follows;

"In order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor, is not enough compliance with the requirements of section 107, I.P.Code."

27. Therefore, for convicting the accused under Section 306 of IPC, it would necessary to see whether the petitioner is intentionally aided the commission of the crime. Here, it is a case, the presence of the accused for proving the case in the occurrence place, there is no evidence available from the prosecution witness. The person, who admitted the deceased in the hospital stated that while at the time the deceased approached him, the appellant was in Dharmapuri. It creates a suspicious circumstances over the case of the prosecution as the appellant abetted the commission of suicide and the same create a doubt over the case of prosecution. It is a settled law that the benefit of doubt is always goes in favour of the accused. Here, it is a case, the trial Court, without appreciating the same, convicted the accused, which is erroneous in law.

28. Accordingly, this Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant/first accused by the learned Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District dated 11.11.2019 in S.C.No.43



of 2018, for the offence under Section 306 of IPC, is set aside. Consequently, connected Criminal Miscellaneous Petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sri

To

1. The Sessions Judge,
Fast Track Magalir Neethimandram,
Krishnagiri,
Krishnagiri District.
2. The Judicial Magistrate-I,
Krishnagiri.
3. The Chief Judicial Magistrate,
Krishnagiri. (For Information)
4. The Inspector of Police,
Burgur Police Station,
Krishnagiri District.
5. The Superintendent,
Central Prison,
Vellore.
6. The Public Prosecutor,
High Court, Madras.

Copy To:-

The Section Officer,
Criminal Side Record,
High Court, Madras - 104.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.14460

CRL.A.NO.825 OF 2019 AND
CRL.M.P.NO.9116 OF 2021

JPL(CO)
PBS/23/03/2022