

BAIL SLIP

That the Appellant/Accused namely Babu was directed to be released on bail as per the order of this Court Dated 25.4.08 and made in CrI.Mp.1/2008 in CrI.A.No.264/2008.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11-12-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.264 of 2008

Babu

.. Appellant/Accused

Vs.

State represented by
Inspector of Police,
V-4 Rajamangalam Police Station
Crime No.571 of 2004
Chennai City.

.. Respondent/Complainant

Criminal Appeal under Section 374(2), Cr.P.C., against the judgment dated 29-02-2008 convicting the appellant under Section 306 and 419 of the Indian Penal Code and sentenced to undergo 5 years Rigorous Imprisonment in respect of Section 306 of the Indian Penal Code and also imposed a fine of Rs.1000/- each with a default sentence of 6 months rigorous imprisonment and also convicted for offence under Section 419 of the Indian Penal Code and sentenced to undergo 2 years Rigorous Imprisonment by the Additional Sessions Judge (Magaleer Needhi Mandram) Chennai in S.C.No.58 of 2007.

For Appellant :: Mr. R. John Sathyan

For Respondent :: Mr.P. Govindarajan,
Addl. Public Prosecutor

JUDGMENT

The convictions and sentences dated 29-02-2008 passed in S.C.No.58 of 2007 by Mahila Court, Chennai are being challenged in the present criminal appeal.

2. The case of the prosecution is that the deceased Revathi has been married to one Sekar, prior to 10 1/2 years and both of them have been blessed with a son by name

Harikrishnan and a daughter by name Monica. The deceased has left her husband and started to live along with the accused. The accused has used to torture the deceased in drunken mood. On 13-05-2004, at about 4:00 p.m., the accused has attacked the deceased and due to overtacts, the deceased has doused kerosene and set fire on her and after occurrence, she has been taken to Government Hospital, where she succumbed to injuries on 14-05-2004, at about 3:15 a.m. After occurrence, one of the brothers of the accused has given a complaint and the same has been registered in C.C.No.571 of 2004. The complaint given by the defacto complainant has been marked as Ex-P1.

3. On receipt of Ex-P1, Investigating Officer, viz., P.W.12 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr. C. Manohar viz., P.W.10 has conducted post-mortem. He found the following external and internal injuries:

"INJURY: Epidermo dermo epidermal baris seen over the pace neck chest and part of abdomen front and back of both upper limbs and font of both lower limbs (65% Burns) Soot present in the trachea No other injury seen. Heart: normal in size. Hyoid bore: Intact Stomach: Empty Lungs Liver spleen kidneys C/s congested Intestines: Distended with gas Brain: normal Spinal Column: Intact.

Opinion: The deceased would appear to have died of Hyporolemic shock due to burns."

The post-mortem certificate has been marked as Ex-P5. The Investigating Officer, after completing investigation has laid a final report on the file of the Judicial Magistrate No.X, Egmore and the same has been taken on file in P.R.C.No.291 of 2004.

4. The Judicial Magistrate No.X, Egmore after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court has committed the case to the Court of Sessions, Chennai Division and taken on file in C.C.No.58 of 2008 and subsequently, made over to the Trial Court.

5. The Trial Court, after hearing arguments of both sides and upon perusing relevant records has made first charge against the accused under Section 306, second charge against him under Section 419, IPC and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 12 have been examined, Exs-P1 to P9 and M.Os.1 to 5 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence has been adduced on the side of the accused.

8. The Trial Court after hearing arguments of both sides and upon perusing relevant evidence has found the accused guilty under Section 306, IPC and sentenced him to undergo five years' Rigorous Imprisonment and also imposed a fine of Rs.1000/- (Rupees One thousand only) with usual default clause. The accused has also been found guilty under Section 419, IPC and sentenced to undergo two years' Rigorous Imprisonment. Against the convictions and sentences passed by the Trial Court, the present criminal appeal has been preferred at the instance of the accused, as appellant.

9. The consistent case put forth on the side of the prosecution is that prior to 10 1/2 years, the deceased Revathi has been given in marriage to one Sekar and both of them have been blessed with two children and prior to one year from the date of occurrence, the deceased Revathi has left her husband and started to live along with the accused. The accused has used to torture her in drunken mood. On 13-05-2004, at about 4:00p.m., the same thing has happened and due to overtacts of the accused, the deceased has doused kerosene and set fire on her and subsequently admitted in Government Hospital, wherein on 14-05-2004, at about 3:15 a.m., she succumbed to injuries.

10. The entire case of the prosecution is based upon Ex-P1, complaint and its author has been examined as P.W.1. The brother of P.W1 has been examined as P.W.7 and their father has been examined as P.W.8. Both P.Ws.1 and 7 are elder brothers of the deceased and P.W.8, is their father. The house owner by name Kala has been examined as P.W.2.

11. The Trial Court after considering the evidence given by the witnesses mentioned supra coupled with Ex-P1 and other documents, has invited convictions and sentences against the appellant/accused as mentioned in the judgment.

12. The learned counsel appearing for the appellant/accused has contended that after occurrence, the then injured has been admitted in Government Hospital wherein it has been reported to P.W.9 to the effect that the then injured has sustained injuries only due to accidental stove burst at the time of cooking and even in Ex-P1, it has been stated that only due to accidental fire, the deceased has sustained burn injuries. On the side of the prosecution, even an iota of evidence is not available for the purpose of proving that the entire occurrence has taken place due to the attack alleged to have been made by the accused on the person of the accused and

the Trial Court without considering lack of evidence, for the purpose of proving the charges framed against the accused, has erroneously invited convictions and sentences and therefore, the convictions and sentences passed by the Trial Court are liable to be set aside.

13. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the brothers of the deceased have been examined as P.Ws.1 and 7 and their father has been examined as P.W.8 and all of them have categorically stated to the effect that at the time of occurrence, both the accused and deceased have resided together and further, P.Ws.2 and 3 have consistently stated to the effect that at the time of occurrence, both the accused and deceased have lived in their house and the Trial Court, after considering the evidence available on record has rightly invited convictions and sentences against the appellant/accused and therefore, the same are not liable to be interfered with.

14. As adverted to earlier, the consistent case of the prosecution is at the time of occurrence both the accused and deceased have resided together in the house of P.Ws.2 and 3. For the purpose of proving the said aspect on the side of the prosecution sufficient evidence is available. The further case of the prosecution is that on the date of occurrence, the accused has, in drunkenmood, attacked the deceased and due to that, she doused kerosene and set fire.

15. In the instant case, the first document is Ex-P4, accident register, wherein it has been stated to the effect that the then injured (deceased) has sustained burn injuries only due to accidental stove burst. The author of Ex-P4 has been examined as P.W.9 and his specific evidence is that at the time of admission the patient is conscious. It is seen from the evidence of the Investigating Officer that the deceased has passed away on 14-05-2004 at 3:15a.m. The complaint(Ex-P1) has been registered on 13-05-2004 at 9:15 p.m. Since P.W.9 has given clear evidence to the effect that at the time of admission the patient is conscious and since she died next day at about 3:15 a.m., the Investigating Officer has not evinced any interest to record dying declaration from the then injured(deceased). As pointed out earlier, the earliest document in the present case is Ex-P4, wherein it has been clearly stated that the then injured has sustained injuries only due to accidental fire. Since in Ex-P4, it has been clearly stated to the said effect and since on the side of the prosecution absolutely there is no evidence for the purpose of coming to a conclusion that only due to overtacts alleged to have been made by the accused, the deceased has doused kerosene and set fire on her, it is needless to say that the prosecution has not at all established the charges framed against the appellant/accused.

16. The Trial Court without considering the materials found in Ex-P4 and also without considering the fact that absolutely there is no evidence, so as to substantiate the charges levelled against the appellant/accused has erroneously invited convictions and sentences against him. In view of the discussion made earlier, this Court has found considerable force in the contentions put forth on the side of the appellant/accused and therefore, the present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The convictions and sentences passed in Sessions Case No.58 of 2007 by the Trial Court are set aside. The appellant is acquitted. Bail bond, if any executed by the accused shall stand cancelled. Fine amount, if any paid by the appellant is ordered to be refunded forth with.

glp

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Additional Sessions Judge, Magalir Needhimandram, Chennai.
2. The Metropolitan Magistrate No.X, Egmore, Chennai-8.
3. -Do- Thro' The Chief Metropolitan Magistrate, Egmore, Chennai-8.
4. The Superintendent, Central Prison, Puzhal, Chennai.
5. The Inspector of Police, V-4 Rajamangalam Police Station, Crime No.571 of 2004.
6. The Public Prosecutor, High Court, Mds.

KR/15/12

Criminal Appeal No.267 of 2008