

Bail Slip

The appellant/ Accused Viz A.Subramani, S/O Arumugam in Crl.A.No.347/07 was directed to be released on bail as per Order of this Court dated 11/4/07 and made in MP 1/07 in Crl. A.347/07

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.347 of 2007

A.Subramani

... Appellant

Vs

State rep. by
Inspector of Police,
Shevapet Police Station,
Salem,
Crime No.963 of 2004.

... Respondent

Prayer:- This Criminal Appeal has been filed under Section 374 of the Criminal Procedure Code, to set aside the judgment of conviction and sentence imposed against the appellant in S.C.No.45 of 2006 on the file of the Sessions Court (incharge) Mahila Court, Salem, Additional District Sessions Judge, Fast Track Court No.II, Salem, dated 23.03.2007 by allowing this appeal.

For Appellant : Mr. P.Jagadesan

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

JUDGMENT

The convictions and sentences dated 23.03.2007 passed in Sessions Case No.45 of 2006 by the Mahalir Neethimandram, Salem are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that prior to marriage, the accused and deceased Vijayalakshmi have loved each other. At the time of marriage, she has had become pregnant and subsequently, their marriage has been performed and after lapse of 7 months, she has given birth to a male child. The accused

has used to say that he is not the father of the said child and due to that, frequent tussle has arisen in between them. On 15.10.2003, at about 7.00 a.m., due to the said reason, the accused has attacked the deceased and since the accused has caused both physical and mental cruelty to the deceased, on the same day, at about 11.30 p.m., the deceased has doused kerosene and set fire on her and due that, she passed away. After occurrence, the father of the deceased has given a complaint and the same has been registered in Crime No.963 of 2003. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On the receipt of Ex.P1, the investigating officer viz PW.10 has taken up investigation, examined connected witnesses and also made arrangements to conduct inquest and accordingly, PW.9 the Revenue Divisional Officer has conducted inquest and his inquest report has been marked as Ex.P8. The investigating officer has also made arrangement to conduct autopsy on the body of the deceased and accordingly, PW6 has conducted the same and he found the following external and internal injuries.

Injuries :- Pugilistic appearance. Superficial burns wounds present over the face front and sides of the neck, front of the chest, abdomen, both upper and lower limbs and whole back of the trunk.

Singeing of front of scalp hair, eye brow, eye lashes and pubic hair. Reddish area present over left chest, right chest, both thighs, inner as part of the both upper hands.

Other findings : Finger and toe nails. Intact, cyn nosed.

Heart : Chambers and valves normal, cavities contained , fluid blood, coronary vessels and great vessels normal.

Lungs : C/s. Congested, trachea, Soot particals present. Hyoid bone intact.

Stomach : Contained 20 ml of grayish yellow fluid. No smell, Mucosa : congested.

Liver, spleen, kidneys : both on c/s congested.

Small intestine : Yellowish chyme present, no smell, Mucosa congested

Uterus : Normal in size, cavity : Empty.

Pelvis Head, Membranes : Intact,

Brain c/s Congested, Spinal coloumn : Intact.

The post-mortem certificate has been marked as Ex.P4. After transfer of PW.10, his successor in office, viz., PW11 has conducted further investigation and after completing the same,

laid a final report on the file of the Judicial Magistrate No.3, Salem and the same has been taken on file in P.R.C.No.28 of 2004.

4. The Judicial Magistrate No.3, Salem, after considering the facts 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, Salem Division and taken on file in Sessions Case No.45 of 2006 and subsequently, made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against the accused under Section 498(A) of Indian Penal Code, second charge against him under Section 306 of Indian Penal Code 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, Pws.1 to 11 have been examined and Ex.P1 to Ex.P.10 and M.O.1 to M.O.3 have been marked.

7. When the accused has been questioned under Section 313 of Criminal Procedure Code 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of accused, DW1 has been examined.

8. The trial court after hearing arguments of both sides and upon perusing the relevant records has found the accused guilty under Section 498(A) of Indian Penal Code and sentenced him to undergo one year Rigorous Imprisonment and also imposed a fine of Rs.500/- and he has also found guilty under Section 306 of Indian Penal Code and sentenced him to undergo four years Rigorous Imprisonment and also imposed a fine of Rs.1000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been preferred at the instance of the appellant/accused.

9. The learned counsel appearing for the appellant/accused has repeatedly contended that the prosecution has set the law in motion on the basis of Ex.P1, complaint, alleged to have been given by the defacto complainant, wherein, no materials are found with regard to materials found in the charges and the trial court without considering the lack of materials in Ex.P1, and also lack of oral evidence on the side of the prosecution has erroneously found the appellant/accused guilty under Sections 498(A) and 306 of Indian Penal Code and therefore, the convictions and sentences passed by the trial court are liable to be interfered with.

10. Per contra, the learned Additional Public Prosecutor has contended that both the accused as well as deceased have loved each other and due to that, she has become pregnant and subsequently, got married and after some time, she has begotten a male child and accused has used to say that he is not the father of the child and due to that, frequent tussle has arisen in between them. On 15.10.2003, at about 7.00 a.m., due to that reason, the accused has attacked the deceased and thereby caused injury and on the same day, at about 11.30 p.m., the deceased has doused Kerosene and set fire on her and since the accused has caused both physical and mental cruelty to the deceased, she committed suicide and all these things have been mentioned in Ex.P1, complaint and the trial court, after considering the over all evidences available on record, has rightly found the accused guilty under Sections 498(A), 306 of Indian Penal Code and therefore, the convictions and sentences passed by the trial court are not liable to be interfered with.

11. For considering the divergent submissions made on either side, the court has meticulously analyze the entire allegations made in Ex.P1, complaint. It is an admitted fact that after occurrence, the defacto complainant, father of the deceased has given Ex.P1, wherein, it has been clearly stated about the love that existed in between the accused and deceased. Further in Ex.P1, it has been clearly stated that after birth of male child, a problem has become emerged in between the accused and deceased and due to giving of vessels, on 15.10.2003, a tussle has arisen in between them and the accused has attacked the deceased and thereby, caused injury.

12. In fact, this court has perused both the charges framed by trial court, wherein, no mention has been made with regard to occurrence alleged to have been taken place on 15.10.2003. In the charge, it has been simply stated that after birth of male child, the accused has used to say that he is not the father of the said child and only due to that, he attacked the deceased on the date of occurrence and therefore, the deceased has doused kerosene and set fire on her.

13. As pointed out earlier, in Ex.P1, apart from the problem that has become emerged after birth of child, some more causes have been mentioned. But, in the charges framed by the trial court, those causes have not at all been mentioned. It simply stated that only after birth of child, the accused has used to say that he is not the father of the child and on the date of occurrence, a tussle has arisen in between them only with regard to the said child and subsequently, the deceased has doused kerosene and set fire on her person.

14. It has already been pointed out that in Ex.P1, so many causes have been mentioned. But, those things are not available in the charges framed by the trial court. Even though, it has been simply stated in Ex.P1 that a problem has become emerged in between the deceased and accused after birth of child, in the charges, it has been specifically stated that after birth of child, the accused has used to say that he is not the father of the child. Therefore, viewing from any angle, the charges framed against the appellant/accused by the trial court are not in consonance with the available evidence on record. The charges framed against the appellant/accused are totally misleading. Since the charges framed against the appellant /accused are totally misleading and the same are not in consonance with the available materials in Ex.P1, this Court cannot come to a conclusion that the convictions and sentences passed by the trial court are correct.

16. It has already been pointed out that all the charges framed against the appellant/accused are totally misleading and the same should be framed on the basis of materials available on record. Under the said circumstances, the convictions and sentences passed by the trial court are liable to be set aside and the matter is liable to be remitted to the file of the trial court.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed under Sections 498(A), 306 of the Indian Penal Code by the trial court are set aside and the Sessions Case No.45 of 2006 is remitted to the file of the trial court. The trial court is strictly directed to amend or alternate the charges suitably in accordance with available materials. If necessary, the prosecution is at liberty to adduce additional evidence. The appellant/accused is directed to make his appearance before the trial court by 19.01.2016. The trial court is also directed to dispose of Sessions Case No.45 of 2006 before the end of April 2016 and report the same to the Registry without fail. Fine amounts are ordered to be refunded forthwith.

Sd/-
Assistant Registrar (CS-III)

True Copy

Sub Assistant Registrar

To

1.The Sessions Judge (Incharge),
Mahila Court,
Additional District Sessions Judge,
Fast Trach Court No.II, Salem.

2.-Do- Thro The District Judge,
Mahila Court,
Salem.

3.The Judicial Magistrate III,
Salem.

4.-Do- Thro The Chief Judicial Magistrate,
Salem.

5.The Superintendent,
Central Prison,
Coimbatore.

6.The Inspector of Police,
Shevapet Police Station,
Salem.

7.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, madras-104.
(for watching and submitting to report)

+1cc to Mr.P.Jagadeesan, Advocate Sr.64694

Cr1.A.No.347 of 2007

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srg 11/12/2015

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