

Bail Slip

The Accused viz., Uma Shankar (A1) and Gowri (A2) having been released on bail as per order of this court dated 03.07.2007 and made in M.P.No.1 of 2007 in CrI.A.No.550 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.550 of 2007

1.Uma Shankar  
2.Gowri

....Appellants/Accused

vs.

State: rep. By  
The Deputy Superintendent of Police  
Kanchipuram District  
Kanchi Taluk Police Station  
Kanchipuram District

....Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment passed by Additional Sessions Judge, Fast Track Court-II, Kanchipuram in S.C.No.25 of 2007 by judgment daed 26.06.2007.

For Appellants : Mr.R.Shanmugasundaram,  
Senior Counsel for Mr.S.M.Loganathan.

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

JUDGMENT

The convictions and sentences dated 26.06.2007 passed in Sessions Case No.25 of 2007 by the Additional District and Sessions Court (Fast Track Court No.II), Kancheepuram are being challenged in the present criminal appeal.

2. The case of the prosecution is that the first accused is the son of second accused. The first accused has married the deceased by name Selvi and both of them lived as husband and wife in the house of the accused. Both the accused have caused torture to the deceased and due to that on 01.01.2006, at about 00.15 hours, the deceased has doused kerosene on her person and set fire and subsequently, passed away. After occurrence, the mother of the deceased by name Suriyakumari, as defacto complainant has given the complaint in question and the same has been registered in Crime No.2/2006. The complaint given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer viz., P.W.12 has conducted investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, doctor Vetrichandar (P.W.5) has conducted autopsy and he found the following external and internal injuries on the body of the deceased:-

"Hair charred, 100% Burns, symmetrical, eyes opened, tongue protruded, nose, mouth, ear- no discharge, Teeth <sup>7 8</sup>  
<sup>8 7</sup>. Heart filled with 50 ml of unclotted blood. Both lungs congested. Soot +. Trachea contains blacky soot, Hyoid-Intact. Stomach contains coffee colour fluid. 100 ml present. Liver-congested. Spleen-congested. Both kidneys-congested. Uterus, Fetus of 8 weeks size present. Cm uterus. Skull-intact. Brain-intact. Specimen sent for chemical analysis.  
1.Stomach and contents.  
2.Intestine & contents.  
3.Sample of Liver.  
4.Sample of Kidneys.  
5.Sample of Lungs.  
6.Preservative NaCl. "

The Post Mortem Certificate has been marked as Ex.P.3. The Investigating Officer has conducted further investigation and after completing the same, laid a final report on the file of Judicial Magistrate No.II, Kancheepuram and the same has been taken on file in P.R.C.No.18/2006.

4. The Judicial Magistrate, Kancheepuram, after considering the facts that the offences alleged to have been committed by both the accused has committed the case to the court of sessions and taken on file in Sessions Case No.25/2007 and subsequently, made over to the trial court.

5. The trial court, after hearing both sides and upon perusing the relevant documents has framed the first charge against both the accused under Section 498-A of the Indian Penal Code (hereinafter called as "IPC"); second charge against them under Section 306 of the IPC and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 12 have been examined and Exhibits P.1 to P.22 and Material Objects 1 to 6 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, D.W.1 has been examined.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found both the accused guilty under Section 498-A of the IPC and sentenced them to undergo three years rigorous imprisonment and also imposed a fine of Rs.1,000/- with usual default clause and they have also been found guilty under Section 306 of the IPC and sentenced them to undergo 5 years rigorous imprisonment and also imposed a fine of Rs.1,000/- 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 accused as appellants.

9. The learned counsel appearing for the appellants/accused has strenuously contended that the entire case of the prosecution is based upon Ex.P.1, wherein, no mention has been made with regard to torture alleged to have been committed by both the accused towards the deceased and further the author of Ex.P.1 has been examined as P.W.1 and her specific evidence is that the deceased has come to her house and stayed there for 20 days and during her stay, she has not spoken anything about the alleged torture made by the accused and the trial court, without considering the lack of evidence, has erroneously found both the accused guilty under Section 498-A and 306 of the IPC and therefore, the convictions and sentences passed by the trial court are liable to be interfered with.

10. In order to sustain the convictions and sentences passed by the trial court, the learned Additional Public Prosecutor has contended that in the instant case, the mother of the deceased has given Ex.P.1, complaint and further she has been examined as P.W.1.

The sisters of the deceased have been examined as P.Ws.2 and 4 and her brother has been examined as P.W.3 and all of them have consistently stated about the torture alleged to have been committed by both the accused. The trial court, after considering the overall evidence has rightly found both the accused guilty under Section 498-A and 306 of the IPC and therefore, the convictions and sentences passed by the trial court do not require interference.

11. Basing upon the divergent submissions made on either side, the court has to look into as to whether the prosecution has proved the alleged guilt of both the accused punishable under Sections 498-A and 306 of the IPC.

12. As rightly pointed out on the side of the appellants/accused, in Ex.P.1, complaint, no mention has been made with regard to torture alleged to have been committed by both the accused. The author of Ex.P.1 has been examined as P.W.1 and her specific evidence is that the deceased has stayed with her for a period of 20 days and she has not reported anything about the demand of dowry alleged to have been made by both the accused. Therefore, it is quite clear that the prosecution has not adduced even flimsy evidence so as to substantiate the charges framed under Section 498-A and 306 of the IPC.

13. In fact, this court has analysed the materials found in the first charge, wherein, it has been simply stated that both the accused have tortured the deceased. In the first charge, it has not been specifically stated as to why both the accused have tortured the deceased. Therefore, it is needless to say that the first charge itself has been erroneously framed. Since the first charge itself has been erroneously framed, the second charge automatically goes out. Even assuming without conceding that both the charges have been framed properly against both the accused, as taunted earlier, even in Ex.P.1, no materials are found place, so as to constitute the offences punishable under Section 498-A and 306 of the IPC. Further, P.W.1, defacto complainant has stated in her evidence, as pointed out earlier. Therefore, viewed from any angle, there is no materials so as to come to a conclusion that both the accused have committed offences punishable under Sections 498-A and 306 of the IPC.

14. The trial court, without considering the fact that the prosecution has not adduced requisite evidence so as to attract penal provisions of 498-A and 306 of the IPC, erroneously invited convictions and sentences. In view of the discussion made earlier, this court has found considerable force in the contentions put forth

on the side of the appellants/accused and altogether, the present criminal appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed by the trial court in Sessions Case No.25 of 2007 are set aside and the appellants/accused are acquitted. Bail bonds, if any executed by them shall stand cancelled. Fine amounts, if any paid by them are ordered to be refunded forthwith.

Sd/-  
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Deputy Superintendent of Police  
Kancheepuram District  
Kanchi Taluk Police Station  
Kancheepuram District
2. The Additional Sessions Judge,  
Fast Track Court-II,  
Kancheepuram.
3. The Judicial Magistrate No.III,  
Kancheepuram.
4. The Chief Judicial Magistrate,  
Chengalpattu (For Information)
5. The Superintendent, सत्यमेव जयते  
Central Prison,  
Puzhal,  
Chennai.
6. The Public Prosecutor,  
High Court,  
Madras.

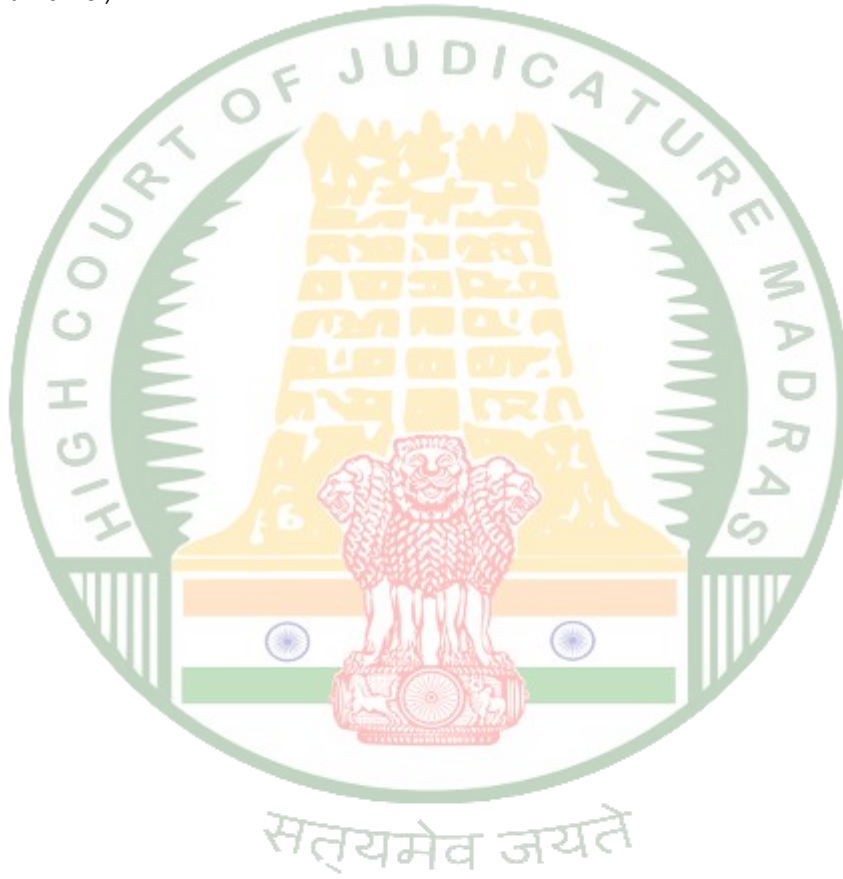
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7. The District Collector,  
Kancheepuram.

8. The Director General of Police,  
Mylapore,  
Chennai - 600 004.

Crl.A.No.550 of 2007

JSV (CO)  
PSI (05.10.2015)



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