

Bail Slip

The Appellant/Accused namely Subramani S/o.Veerabadhran was directed to be released on bail as per order of this court dated 18/07/2015 made in MP.No.1 of 2007 in CrI.A.No.662 of 2007 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.602 of 2015

Subramani

... Appellant

vs.

The State
through Inspector of police,
Tirupattur Taluk Police Station,
Tirupattur, Vellore Dt.

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 11.07.2007, passed by the Additional District and Sessions Judge, Fast Track Court, Vellore, Vellore District, in S.C.No.155 of 2007.

For appellant : Mr.K.S.Rajagopalan

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

JUDGMENT

The conviction and sentence, dated 11.07.2007, passed in Sessions Case No.155/2007 by the Additional District and Sessions Judge (Fast Track Court), Vellore, are being challenged in the present criminal appeal.

2. The case of the prosecution is that the accused is the husband of the deceased, by name, Rani. On 21.06.2005, at about 8.00 p.m. in their house, which situate in C.K.Asramam, Tirupattur, the accused has attacked the deceased and due to that on 22.06.2005, the deceased has committed suicide. After occurrence, the brother of the deceased, by name, Kaliappan, as defacto complainant, has given a complaint and the

same has been registered in Crime No.480 of 2005. The complaint given by him has been marked as Ex.P1.

3. On receipt of Ex.P.1, the Investigating Officer viz., P.W.10, has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, P.W.6, Dr.Parameswari, conducted autopsy and she found the following external and internal injuries:

External injuries appearance: Head (R) side 1/2" above the ear contusion of about 5cm X 2cm present. Face: Froth white seen at the (R) nostril contusion of about 5cm X 1cm extending from (R).....region below the (R) to the (R) cheek (2) After mandible below the (L) ear to the contusion of about 3cm X 1 cm (bluish) present (3) (L) upper arm contusion of about 15cm X 3 cm with colouration (4) (R) Arm shoulder contusion of about 10cm X 1/2 cm present at the middle 1/3 rd of arm contusion of about 6cm x 2 cm (bluish) present (R) side of the base of the neck contusion 4 cm X 2 cm (bluish) present. Over the (R) scapular laceration of about 1 cm, 1 cm/+3 cm present below the above two laceration. (L) leg bone at the lower end contusion of about 5 cm X 1/2 cm present/A1 the lower end (L) Scapular bone contusion of about 6 cm X 1/2 cm present/over the left thigh lab side extending from (L) glutial region to the thigh contusion of about 30 cm present/(L) side of the medial side of the thigh at the upper 1/3rd bluish colour of about 3 cm X 1 cm present/(R) side medial thigh upper 1/3rd 3 cm X 1/2 cm present. (R) middle 1/3rd of thigh contusion of about 4 cm X 2 cm. Chest, breast, abdomen, external genitalia - No external injuries NAD. Neck : Ligature mark extending from the left side of the neck and below the mendible in a slanting position to the of about 15 cm (L) side to the about 20 cm on the (R) side the neck of about 1 cm width. I have seen at theof the neck. Ligature mark along with normal skin sent for chemical analysis. o/D of the (R) side of the neck contusion. blood present with contusion in bluish in colour. O/D.Head scalp blood clot. Subcutaneous region corresponding to the contusion on the head/abrasion of about 1/2 cm X 1/4 cm at the upper lip on both sides about the canion tooth of left and right side present with bluish discolouration around the wound present. Neck: Hyoid NADsent for chemical analysis ligature. O/D. Parchment leathery. No haemorrhage or the mark and the surrounding normal skin sent for analysis. Chest NAD ribs normal. O/D Heart all chambers empty. Lungs

Bloody froth oozing from the lungs Abdomen - NAD o/D (i) stomach-empty only musea seen (2) Small Intestine empty (3) Kidney (4) Liver - N All 1, 2, 3, 4 sent for chemical analysis: Bladder NAD empty: pelvis/external genitalia - NAD: Uterus Normal size O/D+6 uterine cavity empty.

The Postmortem certificate has been marked as Ex.P6. After completing investigation, P.W.10 has laid a final report on the file of the Judicial Magistrate, No.II, Tirupattur and the same has been taken on file in P.R.C.No.1 of 2007.

4. The Judicial Magistrate, No.II, Tirupattur, 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 Vellore Division and the same has been taken on file in Sessions Case No.155/2007 and subsequently made over to the trial Court.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant documents has framed first charge against the accused under Section 498-A of the Indian Penal Code; second charge against him under Section 306 of the 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, P.Ws.1 to 10 have been examined and Exhibits P.1 to P.22 and Material Objects 1 and 2 have been marked.

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

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 306 of the Indian Penal Code and sentenced him to undergo ten year rigorous imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present criminal appeal has been preferred at the instance of the accused, as appellant.

9. The learned counsel appearing for the appellant/accused has raised the following points so as to supplant the conviction and sentence passed by the trial Court under Section 306 of the Indian Penal Code:

(i) The prosecution has not adduced acceptable evidence so as to prove the offence punishable under Section 498-A of the Indian Penal Code.

(ii) The prosecution has failed to establish that only due to alleged cruelty caused by the accused, the deceased has committed suicide.

10. The learned Additional Public Prosecution has contended that in the instant case, the entire occurrence has taken place inside the house of the accused as well as deceased and further in Ex.P6, Postmortem Certificate, it has been clearly stated that the deceased has sustained some bodily injuries and since the entire occurrence has taken place inside the house of both the accused and deceased and since the deceased has sustained some bodily injuries, as per Section 106 of the Indian Evidence Act, 1872, the entire burden lies upon the accused. But in the instant case, the accused has not discharged his burden and under the said circumstances, the trial Court has rightly found the accused guilty under Section 306 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are not liable to be set aside.

11. The consistent case put forth on the side of the prosecution is that on 21.06.2005, in the house of both the accused and deceased, the accused has attacked the deceased and thereby caused cruelty. The further case of the prosecution is that on 22.06.2005, due to overt acts alleged to have been committed by the accused on the previous day, the deceased has committed suicide.

12. It has already been pointed out that the accused has faced two charges punishable under Sections 498-A and 306 of the Indian Penal Code. Therefore, in view of the circumstances of the case put forth on the side of the prosecution, the prosecution has to establish the occurrence alleged to have been taken place on 21.06.2005.

13. The defacto complainant has been examined as P.W.1 and his mother has been examined as P.W.2. The wife of P.W.1 has been examined as P.W.3. Both P.Ws 2 and 3 have stated in their evidence that the father of the accused has reported to them to the effect that on previous night, the accused has attacked the deceased. But for the purpose of proving the said aspect, the father of the accused has not been examined as one of the witnesses on the side of the prosecution. Further, the evidence given by P.Ws.2 and 3 is nothing but hearsay and the same cannot be looked into.

14. As pointed out earlier, the first and foremost charge framed against the appellant/accused is under Section 498-A of the Indian Penal Code. In fact, on the side of the prosecution, virtually no evidence is available so as to attract the penal provision of Section 498-A of the Indian Penal Code. Further P.W.2 has clearly stated in

her evidence that at the time of occurrence, the accused has resided in Sengam.

15. The learned Additional Public Prosecutor, as pointed out earlier, has vehemently contended that in Ex.P6, Postmortem Certificate, it has been clearly mentioned about the bodily injuries sustained by the deceased and the same have not been explained on the side of the accused and therefore, Section 106 of the Indian Evidence Act, 1872, is applicable in the present case.

16. It is true that in Ex.P6, Postmortem Certificate, it is mentioned that the deceased has sustained some bodily injuries and P.W.6, who conducted autopsy, has deposed to the effect that the deceased would have sustained those injuries one or two days prior to the date of postmortem. Simply because in Ex.P6, some injuries are mentioned to the effect that the deceased has sustained the some, the Court cannot accept the contention put forth on the side of the prosecution. The reason is that even the prosecution witness, viz., P.W.2 has stated in her evidence that on the date of occurrence, the accused has resided in Sengam. Therefore, on the side of the prosecution, it has not been established to the effect that on the date of occurrence as well as on the previous day, both the accused and deceased have lived together. Since the said aspect has not at all been established, the Court cannot automatically come to a conclusion that the accused has committed an offence punishable under Section 498-A of the Indian Penal Code. Likewise, the prosecution has failed to establish that only due to overt acts alleged to have been committed by the accused, the deceased has been driven to commit suicide. Therefore, viewing from any angle, on the side of the prosecution, absolutely there is no evidence either to invoke Section 498-A or 306 of the Indian Penal Code.

17. The trial Court, without considering lack of evidence either for invoking Section 498-A or Section 306 of the Indian Penal Code, has erroneously found the accused guilty under Section 306 of the Indian Penal Code simply on the ground that the accused is the husband of the deceased.

18. It has already been pointed out in detail that the prosecution has miserably failed to prove the offence alleged to have been committed by the deceased under Section 498-A of the Indian Penal Code and also under Section 306 of the Indian Penal Code. In view of the discussion made earlier, this Court has found considerable acceptable force in the contention raised on the side of the appellant/accused and altogether the present criminal appeal is liable to be allowed.

In fine this criminal appeal is allowed. The conviction and sentence passed by the trial Court in Sessions Case No.155 of 2007 are set aside. The appellant/accused is acquitted. Bail bonds, if any, executed by the appellant/accused shall stand cancelled. Fine amount, if any, paid by him is ordered to be refunded forth with.

msk

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub-Assistant Registrar

To :

1. The Additional District and Sessions Judge,
Fast Track Court, Vellore,
Vellore District
2. The Inspector of police,
Tirupattur Taluk Police Station,
Tirupattur, Vellore Dt.
3. The Mahila Court,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras

+1 C.C. to MR.K.S.RAJAGOPALAN, Advocate in Sr.No.56131

सत्यमेव जयते

Cr1.A.No.602 of 2007

VSN(CO)

sd : 14/10/2015

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