

BAIL SLIP

Appellant in Crl.A.No.800/2007 (Accused in S.C.NO.432 of 2006 dated 6/8/2007 on the file of the Sessions Judge (Mahila Court) Cuddalore) was directed to be released on Bail as per order of this Court dated 29/8/2007 in MP.No.1/2007 in Crl.A.No.800/2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.800 of 2007
and M.P.No.1 of 2007

Poomalai

... Appellant/Accused

vs.

The State

Rep. by the Inspector of Police,
Tittakudy Police Station,
Tittakudy,
Cuddalore District

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and conviction made in Sessions Case No.432 of 2006 dated 06.08.2007 on the file of the Sessions Judge, (Mahila Court), Cuddalore.

For appellant : Mr.S.Swamidoss Manokaran

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

JUDGMENT

The conviction and sentence dated 06.08.2007 passed, in Sessions Case No.432 of 2006, by the District and Sessions Judge (Mahila Court), Cuddalore, 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, Suseela. After marriage both of them have lived as husband and wife happily for a short span of one year and subsequently, the accused has used to demand money from the deceased for taking brandy and also for his lavish expenditure. On 14.6.2006, the accused has demanded

the same thing from the deceased and due to that, she has gone to her parents house and on 19.6.2006, at about 5.00 p.m. she doused kerosene and set fire on her and due to burn injuries, she passed away. After occurrence, the father of the deceased, as defacto complainant, has given a complaint and the same has been registered in Crime No.98 of 2006. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating officer, viz., P.W.12, has taken up investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly Dr.Mageswari (P.W.11) has conducted autopsy and she found the following external and internal injuries:

"Both eyebrows and eye lashes are burnt. Face: Bluish black in colour. Frothy discharge fromand nostrils are seen. Skin is peeled off from face, neck, throat, abdomen, both thighs, legs, foot both anteriorly and interiorly. Skin peeled off from above said organs. Both hands empty. Internal organ are congested. Heart chambers are empty. 180 gms. Both lungs areblack in colour. (R) 500gm (L) 480 gm. Stomach contains 500 gm of partially digested rice particles, liver 1200 gm. Spleen 96 gms. Kidneys 96 gms. Intestine contains matter. Bladder empty. External genitalia normal. Uterus normal. Skull intact, covering of brain intact. Brain congested pelictial haemorrhage and seen over the surface of brain. Hyoid bone and viscera are preserved."

The Postmortem certificate has been marked as Ex.P14.

4.After completing investigation, P.W.12 has laid a final report on the file of the District Munsif-cum-Judicial Magistrate, Tittakudy and the same has been taken on file in P.R.C.No.22 of 2006.

5.The District Munsif-cum-Judicial Magistrate, Tittakudy, 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, Cuddalore Division and the same has been taken on file in Sessions Case No.432 of 2006.

6. 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 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.

7. On the side of the prosecution, P.Ws.1 to 12 have been examined and Exs.P1 to P20 and M.Os.1 and 2 have been marked.

8. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the 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.

9. The trial Court, after hearing arguments of both sides and also upon perusing the relevant records, has found the accused guilty under Section 498-A of the Indian Penal Code and sentenced him to undergo two years Rigorous Imprisonment and also imposed a fine of Rs.1000/- with usual default clause. The trial Court has acquitted the accused under Section 306 of the Indian Penal Code. 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.

10. The learned counsel appearing for the appellant/accused has contended with great vehemence to the effect that in the instant case, most of the witnesses have become hostile and the trial Court has invited conviction and sentence against the appellant only on the basis of Ex.P5, dying declaration, alleged to have been recorded by P.W.9, wherein, no materials are found so as to invoke Section 498-A of the Indian Penal Code against the appellant/accused and the trial Court, without considering lack of evidence on the side of the prosecution, has erroneously invited conviction and sentence against the appellant/accused and the same are liable to be set aside.

11. Per contra, the learned Additional Public Prosecutor has contended that even though most of the material witnesses have become hostile, the deceased has given a dying declaration, wherein sufficient materials are available so as to invoke Section 498-A of the Indian Penal Code and the trial Court, after considering the overall evidence available on record, has rightly found the appellant/accused guilty under the said Section. Further, the concerned Revenue Divisional Officer has conducted inquest and filed his inquest report as Ex.P.12, wherein also it has been clearly stated about the demand of dowry alleged to have been made by the appellant/accused and therefore, the conviction and sentence passed by the trial Court are not liable to be set aside.

12. After considering the divergent submissions made on either side, the Court has to closely scrutinize the materials mentioned in the first charge, wherein it has been simply stated that very often the accused used to demand money for taking brandy and also for his lavish expenditure from the deceased. Even prior to five days from the date of occurrence, he has done the very same thing. Except the said allegations, no allegation is found in the first charge with regard to demand of dowry.

13. As rightly pointed out on the side of the appellant/accused, the trial Court has invited conviction and sentence only on the basis of Ex.P5, dying declaration, alleged to have been given by the deceased. In Ex.P5, it has been simply stated that the husband of the deceased (accused) has demanded dowry. Further, it has been stated that he attacked her. Except the materials mentioned supra, no other materials are available in Ex.P5, so as to substantiate the materials found in the first charge.

14. As stated earlier, in the first charge, it has been specifically stated that very often the accused used to demand money for taking brandy and also for his lavish expenditure, from the deceased. But the said aspect is not found place in Ex.P5. In Ex.P5, materials are available so as to come to a conclusion that the accused has demanded dowry from the deceased. But the alleged demand of dowry is not found place in the first charge. Since the first charge is not inconsonance with the materials found in Ex.P5, dying declaration, on the basis of Ex.P5, the Court cannot come to a conclusion that only due to demand of dowry, the deceased has passed away. Therefore, the conclusion arrived at by the trial Court, on the basis of Ex.P5, is totally erroneous.

15. It is seen from the records that almost all material witnesses have become hostile. If really such occurrence has taken place, as spoken on the side of the prosecution, definitely, the parents of the deceased would not have become hostile witnesses. Therefore, virtually, there is no evidence so as to invoke Section 498-A of the Indian Penal Code.

16. The trial Court, without considering the lack of evidence on the side of the prosecution, has erroneously found the appellant/accused guilty under Section 498-A of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

In fine, this criminal appeal is allowed. The

conviction and sentence passed by the trial court in Sessions Case No.432 of 2006 are set aside. The appellant/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled. Fine amount, if any, paid by him is ordered to be refunded forthwith. Connected miscellaneous petition is closed.

-Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

msk

To :

- 1.The Sessions Judge, Mahila Court,
Cuddalore
- 2.The District Munsif cum Judicial Magistrate
Tittakudi
- 3.-do-Thro'The Chief Judicial Magistrate
Cuddalore
- 4.The Superintendent Central Prison, Cuddalore
- 5.The Inspector of Police,
Tittakudy Police Station,
Tittakudy,
Cuddalore District
- 6.The Public Prosecutor,
High Court, Madras

+1 cc to Mr.S.Swamidoss Manokaran Advocate sr,62062

Crl.A.No.800 of 2007

aa17/11/2015