

Bail Slip

That the Appellant herein/Sole Accused Vig:- Selladurai, was directed to be released on Bail as per the Order of this court dated 24/09/2007 and made in CrI.MP.NO.1 of 2007 in CrI.Appl.No.880 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.880 of 2007
and M.P.No.1 of 2007

Mr.Selladurai ... Appellant/Accused

vs.

The State
Rep. by the Inspector of Police,
Perambalur Police Station,
Perambalur ... Respondent/Complainant
(Cr.Mo.179 of 2005)

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the conviction and sentence made in Sessions Case No.31 of 2007 dated 30.08.2007 on the file of the Sessions Judge, Mahila Court, Perambalur.

For appellant : Mr.A.Sirajudeen for
M/s.Siraj & Siraj

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

JUDGMENT

The conviction and sentence, dated 30.8.2007, passed in Sessions Case No.31 of 2007, by the Sessions Judge, Mahila Court, Perambalur, 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, Sagunthala and father of remaining deceased. The accused has had illicit contact with a woman and the same has been questioned by his wife and due to that, a tussle has arisen in between him and his wife. On one occasion, the accused has tried to rape his elder daughter and the same has been questioned by his wife and due to cruelty alleged to have been caused by the accused, on 15.4.2005 all the

deceased have consumed pesticide and subsequently passed away. After occurrence, the concerned Village Administrative Officer (P.W.1) has given the complaint in question and the same has been registered in Crime No.179 of 2005. The complaint alleged to have been given by P.W.1 has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating officers, viz., P.Ws.10, 11 and 12 have conducted investigations and also made arrangements for conducting autopsy on the bodies of the deceased and accordingly, P.Ws.8 and 9 have conducted autopsy on the bodies of the deceased. After completing investigation, P.W.11 has laid a final report on the file of the Judicial Magistrate Court, Perambalur and the same has been taken on file in P.R.C.No.56 of 2006.

4. The Judicial Magistrate, Perambalur, 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, Perambalur Division and the same has been taken on file in Sessions Case No.31 of 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 306(4 counts) of the Indian Penal Code; second charge against him under Section 4-B (4 counts) of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 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 and Exs.P1 to P.23 and M.Os.1 to 3 have been marked.

7. 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 have been let in on the side of the accused.

8. The trial Court, after hearing arguments of both sides and also upon perusing the relevant evidence available on record, has found the accused guilty under Section 498-A of the Indian Penal Code and sentenced him to undergo three years Rigorous Imprisonment and also imposed a fine of Rs.3000/- with usual default clause. The trial Court has acquitted the accused in respect of the charges framed under Sections 306 (4 counts) of the Indian Penal Code and also under Section 4-B (4 counts) of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. Against the conviction and sentence passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellent.

9. The learned counsel appearing for the appellant/accused has sparingly contended that in the instant case, no specific charge has been framed under Section 498-A of the Indian Penal Code and no specific evidence is available for the purpose of proving the cruelty alleged to have been caused by the appellant/accused against the deceased and inspite of lack of evidence on the side of prosecution, as well as lack of charge under the said Section, the trial Court has invited conviction and sentence and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

10. The learned Additional Public Prosecutor has contended that in the instant case, replete evidence is available so as to prove that only due to cruelty caused by the appellant/accused upon the deceased, they committed suicide and the trial Court, after considering the over all evidence available on record, has rightly found him guilty under Section 498-A 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 the appellant/accused is the husband of the deceased by name, Sagunthala and both of them have been blessed with three daughters. The accused has had illicit intimacy with a lady and due to that, frequent tussles have had happened in between the accused and his wife and the accused has tried to rape his elder daughter and finally, on 15.4.2005, a miff has arisen in between the accused and his wife and thereby caused cruelty and under the said circumstances, all the deceased have consumed poison and subsequently passed away.

12. The prosecution has set the law in motion only on the basis of Ex.P1-complaint. The author of the complaint is none other than the concerned Village Administrative Officer and he has no connection whatsoever with the cruelty alleged to have been caused by the accused.

13. The brother and sister of the first deceased have been examined as P.Ws.2 and 3 and their specific evidence is that their sister has used to say about the cruelty alleged to have been caused by the accused. At this juncture, the Court has to look into their statements recorded under Section 161(3) of the Code of Criminal Procedure, 1973, wherein, no mention has been made with regard to the said aspect. Therefore, it is quite clear that they have not said anything in their 161(3) statements. They adduced evidence before the Court and the same cannot be admitted.

14. Except the ipse dixit of P.Ws.2 and 3, the prosecution has not adduced any evidence with regard to cruelty alleged to have been caused by the appellant/accused and further, evidence given by P.Ws.2 and 3 cannot be believed in and they deposed their evidence only on the basis of hearsay. Therefore, virtually the prosecution is not having any other witness so as to point out the guilt of the accused under Section 498-A of the Indian Penal Code.

15. The learned counsel appearing for the appellant/accused has contended that even without framing a specific charge under the said Section, the trial Court has found him guilty under the said Section.

16. Considering the fact that the trial Court has given punishment under Section 498-A of the Indian Penal Code, a specific charge must be framed against the appellant/accused and since no specific charge has been framed and since no acceptable evidence are found placed on the side of the prosecution so as to attract penal provision of the said Section, it is needless to say that the conviction and sentence passed by the trial Court are not factually and legally sustainable 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.31 of 2007 are set aside. The appellant/accused is acquitted and bail bonds, if any, executed by him shall stand cancelled and fine amount, if any, paid by him is ordered to be refunded forthwith. Connected miscellaneous petition is closed.

msk

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To :

1. The Inspector of Police,
Perambalur Police Station,
Perambalur
2. The Sessions Judge, Mahila Court,
Perambalur.
3. The Public Prosecutor,
High Court, Madras
4. The Principal Sessions Judge,
Perambalur

5. The Judicial Magistrate,
Perambalur

6. The Chief Judicial Magistrate,
Perambalur

+1 C.C. To MR.SIRAJ & SIRAJ, Advocate in SR.NO.53779

Crl.A.No.880 of 2007

UG(CO)
sd : 09/10/2015



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