

BAIL SLIP

The Appellant in Crl.A.No.1537/2003 herein/Accused in S.C.No.105/2003 (on the file of the Additional District and Sessions Judge, Namakkal) namely Mathivanan, S/o.Raju was released on bail as per order of this Court dated 20.10.2003 in Crl.M.P.No.9747 of 2003 in Crl.A.No.1537 of 2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.1537 of 2003

Mathivanan

... Appellant

vs.

State rep.by:
The Inspector of Police,
Namakkal Town Police Station
Namakkal District

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and conviction dated 10.10.2003 in S.C.No.105 of 2003 on the file of the Additional District and Sessions Judge (Fast Track Court No.3), Namakkal.

For appellant : Mr.D.Shivakumaran

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

JUDGMENT

The conviction and sentence dated 10.10.2003 passed in Sessions Case No.105 of 2003 by the Additional District and Sessions Court (Fast Track Court No.3), Namakkal are being challenged in the present Criminal Appeal.

2. The nub of the case of the prosecution is that the accused is the husband of the deceased Sumathi and both of them have lived in Nallipalayam Village, Namakkal Taluk. On 19.10.2002 the accused has

hurled invectives against the accused and due to overtacts of the accused, on the same day at about 6.30 a.m, the deceased has doused kerosene on her person and set fire on her. The deceased has had instantaneous death. After occurrence, a neighbour by name Subramani, as defacto complainant, has given the complaint in question and the same has been registered in Crime No.1399 of 2002. The complaint given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer (P.W.11) has taken up investigation, examined connected witnesses and also made arrangements to conduct necropsy on the body of the deceased and accordingly, the Doctor by name Ramasamy, viz., P.W.8 has conducted autopsy and he found the following external and internal injuries:

External injuries:

1st, 2nd degree (95%) burn all over the body except lower abdomen. Sizing of scalp hair present

Internal examination:

Head: Skull no fracture, membrane intact, no fracture in base of skull.

Neck: Hyoid bone is intact.

Thorax: No rib. Heart-normal in size, congested, lungs congested, Heart filled with blood

Abdomen: Stomach contain 200ml. partially digestive, broom with thin, stomach mucosa congested, liver, spleen, pancreas kidney congested, Intestine-distended with gas, urinary bladder filled with urine.

The deceased would appear to have died of shock due to extensive 1st & 2nd degree burns about 95%, 6.10 a.m., prior to postmortem examination.

The Post-mortem Certificate has been marked as Ex.P.9. After completing the investigation, P.W.11, Investigating Officer has laid a final report on the file of the Judicial Magistrate No.1, Namakkal and the same has been taken on file in P.R.C.No.2 of 2003.

4. The Judicial Magistrate No.1, Namakkal, after considering the fact 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, Namakkal Division and the same has been taken on file in Sessions Case No.105 of 2003 and subsequently made over to the trial court.

5. The trial court, after hearing both sides and upon perusing the relevant records, has framed first charge against the accused under section 498-A, 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, P.Ws.1 to 11 have been examined and Exhibits P.1 to P.1 and Material Objects 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. On the side of the accused, D.Ws.1 and 2 have been examined and Exhibits D.1 to D.4 have been marked.

8. The trial court, after hearing both sides and also after evaluating the available evidence on record has found the accused guilty under Section 306 of Indian Penal Code and sentenced him to undergo 4 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default sentence. The trial court has acquitted the accused under section 498-A of 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.

9. The consistent case put forth on the side of the prosecution is that the accused is the husband of the deceased by name Sumathi and both of them have lived under the same roof in Nallipalayam Village, Namakkal Taluk. On 19.10.2002, at about 6.30 a.m., the accused has hurled invectives against the deceased and due to his overtacts, the deceased has doused kerosene and set fire on her and due to that, she has had instantaneous death. Under the said circumstances, the accused is said to have committed offences punishable under sections 498-A and 306 of Indian Penal Code.

10. As stated earlier, the trial court has found the accused guilty under section 306 of Indian Penal Code and sentenced him to undergo imprisonment as stated in the judgment.

11. The learned counsel appearing for the appellant/accused has contended that on the side of the prosecution, P.Ws.1 to 4 have been examined and they are nothing but neighbours and they simply stated that on the date of occurrence, a skirmish has occurred in between the appellant and deceased and the son of the appellant and deceased by name Gopikrishnan has been examined as P.W.9 and he stated in his evidence that on the date of occurrence, his father has berated his mother from taking milk from a milk vendor by way of saying that she is having an illicit intimacy with the said milk vendor and subsequently his mother has doused kerosene and set fire on her, but in the statement given by him under section 161 Clause (3) of Code of Criminal Procedure, 1973, no such facts are mentioned and further, the Investigating Officer, viz., P.W.11 has clearly deposed to the effect that P.W.9 has given evidence about the said aspect, which has

not been spoken by him in 161(3) statement and further P.W.11 has stated that no previous complaint is pending against the accused and under the said circumstances, the evidence given by P.W.5, father of the deceased, cannot be accepted and altogether, the prosecution has not adduced a concrete evidence for the purpose of showing that only due to specific overtacts of the accused, the deceased has doused kerosene and set fire on her and since such vital aspect is completely lacking on the part of the prosecution, it is highly improbable to come to a conclusion that the appellant/accused has committed an offence punishable under section 306 of I.P.C, but the trial court, without considering lack of evidence with regard to the said aspect, has erroneously found the appellant/accused guilty under the said section and therefore, the conviction and sentence passed by the trial court are liable to be interfered with.

12. In order to resile the contentions put forth on the side of the appellant/accused, the learned Additional Public Prosecutor has also equally contended that P.Ws.1 to 4 are neighbours and they have spoken about the occurrence, which has taken place in front of the house of the accused and deceased and P.Ws.5 and 6 are the parents of the deceased and they have spoken about the previous conduct of the accused and further P.W.9 is the son of both the accused and the deceased and he speaks about the conduct of the deceased. Further, his evidence is that on the date of the occurrence, his father has berated his mother by way of saying that she is having illicit intimacy with milk vendor and only due to that, the deceased has doused kerosene and set fire on her and in fact, the prosecution has adduced enormous evidence so as to come to a conclusion that the appellant/accused has committed the offence punishable under section 306 of Indian Penal Code and the trial court, after considering the enormous evidence available on the side of the prosecution, has rightly found the appellant/accused guilty under the said section and therefore, the conviction and sentence passed by the trial court do not call for any interference.

13. It has already been pointed out that the appellant/accused has faced two charges, under sections 498-A and 306 of Indian Penal Code, but the trial court has acquitted the appellant/accused under section 498-A of Indian Penal Code by way of holding that sufficient evidence is not available so as to attract the penal provision of Section 498-A of IPC, but the trial court has found the appellant/accused guilty under section 306 of IPC and also imposed the sentence as mentioned in the judgment.

14. The entire argument put forth on the side of the appellant/accused is that the prosecution has failed to prove the immediate cause for committing suicide on the part of the deceased.

15. It is true that P.Ws.1 to 4 are neighbours and they have simply spoken to the effect that a miff has arisen between the accused and deceased. The defacto complainant has given Ex.P.1,

wherein no specific reason has been given for committing suicide on the part of the deceased.

16. In the instant case, even though P.Ws.1 to 11 have been examined, the evidence given by P.W.9 places a pivotal role. The specific evidence given by P.W.9 is that on the date of occurrence, her mother has attempted to take milk from a milk vendor, but his father has berated her by way of saying that her mother is having illicit intimacy with the said milk vendor. At this juncture, the Court has to look into the statement alleged to have been given by P.W.9 under section 161 Clause (3) of the Code of Criminal Procedure, 1973. In the said statement, no such materials are available for the purpose of showing that the accused has deterred the deceased from getting milk, by way of saying that she is having illicit intimacy with him. Further, the Investigating Officer has been examined as P.W.11 and his specific evidence is that no previous complaint is pending against the accused. Further, he has clearly admitted to the effect that P.W.9 has not stated in his statement recorded under section 161(3) of Code of Criminal Procedure, 1973 to the effect that on the date of occurrence, his father has deterred his mother from taking milk by way of saying that she is having illicit intimacy with the milk vendor. Therefore, it is quite clear that some improvements have been made in the evidence given by P.W.9 with regard to the alleged illicit intimacy of the deceased with milk vendor.

17. As pointed out earlier, the parents of the deceased have been examined as P.Ws.5 and 6. The specific evidence given by P.W.5 is that the accused has used to suspect the fidelity of the deceased very often and also tortured her and due to that, a police complaint has been made against him. But, to utter dismay on the side of the prosecution, except Ex.P.1, no other police complaint has been filed. Further, P.W.11, as pointed out earlier, has clearly stated to the effect that no previous police complaint is pending against the accused.

18. In the instant case, as pointed out earlier, P.Ws.1 to 4 have spoken about the skirmish alleged to have taken place in between the accused and the deceased. P.W.9 has adduced only the improved version and his evidence cannot be believed in. Under the said circumstances, this Court is of the considered view that absolutely there is no evidence for coming to a conclusion that only due to alleged overtact of the accused, the deceased has been driven to commit suicide. Since absolutely there is no evidence with regard to the said aspect, it is not possible on the part of the court to come to a conclusion that the accused has committed an offence punishable under section 306 of IPC.

19. The trial court, without considering the lack of evidence and also without assessing the available evidence on record, has erroneously found the appellant/accused guilty under the said section. In view of the discussions made earlier, this Court has

found considerable force in the contentions put forth on the side of the appellant/accused and therefore this 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.105 of 2003 are set aside and 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 forthwith.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ajr
To :

- 1.The Judicial Magistrate, Namakkal.
- 2.The Chief Judicial Magistrate, Namakkal.
3. Additional District and Sessions Judge (Fast Track Court No.3), Namakkal.
- 4.The Inspector of Police,
Namakkal Town Police Station
Namakkal District
- 5.The Superintendent, Central Prison, Coimbatore.
6. The Public Prosecutor,
High Court, Chennai.
- 7.The Section Officer, Criminal Section, High Court, Madras.

Crl.A.No.1537 of 2003

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pmk.22.9.2015

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