

BAIL SLIP

That the Appellant/Accused namely (A1) Ramesh @ Srinivasan, S/o.Ramachandran, was directed to be released on bail dated 19.02.2016 in CrI.M.P.No.1314 of 2015 in CrI.A.No. 194 of 2014.

That the Appellant/Accused namely (A2) Anjalai, W/o.Ramachandran, was directed to be released on bail dated 17.10.2014 in CrI.M.P.No.2 of 2014 in CrI.A.No.194 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.194 of 2014

1. Ramesh @ Seenivasan
2. Anjalai

... Appellants

Vs

State rep. By
Inspector of Police,
Sooramangalam Police Station,
Salem District,
Crime No.1866 of 2009

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the judgment dated 17.03.2014 passed in S.C.No.168 of 2010 on the file of I Additional District and Sessions Judge, Salem.

For Appellants : Mr. M.G.Udaya Shankar

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The appellants are A1 and A2 in S.C.No.168 of 2010 on the file of the learned I Additional District and Sessions Court, Salem. A1 stood charged for an offence under Section 302 IPC. A2 stood charged for an offence under Section 302 IPC. After trial, by judgment dated 17.03.2014, the

trial Court convicted both the accused and sentenced them to undergo Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo further period of one year simple imprisonment for the offences under Sections 302 and 302 r/w.34 IPC against A1 and A2 respectively. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

Deceased, in this case is one Suganthi. She is the wife of A1. A2 is her mother-in-law. The marriage between A1 and the deceased took place in the year 2006. At the time of marriage, the deceased was presented with gold jewels and other house-hold articles by P.W.1., the father of the deceased. Out of the said wedlock, they got a male child. There was a quarrel between the deceased and A1 regarding pledging of gold jewels belonging to the deceased. Whiles, on 21.09.2009, at about 9.00 a.m., there was a quarrel between A1 and the deceased. At that time, A2 pulled the deceased inside the house by holding her tuft and A1 poured kerosene on the deceased and set fire on her. Thereafter, A1 took the deceased in an Ambulance to Mohan Kumara Mangalam Medical College hospital, Salem. But, at the time of admission, she stated before the doctor that she poured kerosene on her own and set fire to herself. P.W.14, doctor admitted the deceased in the hospital and issued an accident register (Ex.P.13), in which, he has stated that it is a case of self immolation.

3. Thereafter, P.W.9, then Head Constable, working in the respondent police, on receipt of information from the hospital, went to the hospital and obtained a statement (Ex.P.1) from the deceased at about 2.30 p.m., on 21.09.2009 and registered a case in Crime No.166/2009 for an offence under Section 307 IPC at 5.00 p.m., the First Information Report is Ex.P.9.

4. P.W.10, Sub-Inspector of Police, working in the respondent police, on receipt of First Information Report, commenced investigation and sent the First Information Report to the learned Judicial Magistrate. In the meantime, on receipt of a memo requesting for recording dying declaration, P.W.13, Judicial Magistrate No.IV, Salem, went to Mohan Kumara Mangalam Hospital and recorded the dying declaration of the deceased (Ex.P.12). Subsequently, the deceased succumbed to injury at about 8.50 p.m, on 21.09.2009. Hence, P.W.10 altered the charge into Section 302 IPC (Ex.P.11).

5. P.W.16, Inspector of the respondent police, took up the investigation and visited the scene of occurrence. He prepared an Observation Mahazar (Ex.P.17) and a Rough sketch (Ex.P.18) and also seized pillow (M.O.2), plastic

chair (M.O.3), Bed (M.O.4), Bed Sheet (M.O.5) and Match box with match sticks (M.O.6), in the presence of P.W.7 and another witness. Then, he went to the Government Hospital and conducted inquest in the presence of panchayathars and prepared an Inquest Report (Ex.P.20) and recorded statements of witnesses and sent the body for Postmortem through P.W.12.

6. P.W.15, Doctor, working in Mohan Kumara Mangalam Hospital, Salem, conducted postmortem on the body of the deceased on 22.09.2009 at 12.45 p.m and found the following injuries:

" Following Antemortem injuries are seen :
Dermo epidermal burns with reddish area of inflammation seen over scalp, face, front sides and back of nect, front and back of the chest and abdomen, whole of back, both shoulders, both upper limbs including hands, both lower limbs except soles and both gluteals, external genttalia and both soles-intact eye brows, eyelashess, scalp hair, axillary har-singed. Pubic hair. Partly singed (Antemortem).
Other findings :

O/d head - scalp-intact, dural membranes and cranial vault- intact, brain c/s congested, base of skull - intact.

O/d. Neck - All neck structures- normal, Hyoid bone- intact. Soot particles seen in congested tracheal mucosa.

O/d Thorax - No Rib fracture. Lungs c/s congested. Heart - normal in size. Chambers contained minimal fluid blood. Myocardium - normal. Coronaries - patent.

O/d abdomen : Stomach contains 90 ml of brown colour fluid with no specific smell mucosa c/s. Congested. Liver, spleen and kidneys- c/s. Congested. Bladder - Empty. Gentalia - no cavity contained 6-8 weeks of products of conception. Pelvis and spinal column- intact.

Multiple superficial incisions made all over the body. No underlying contusion seen anywhere in the body."

Ex.P.16 is the Postmortem Certificate. She also gave opinion that the deceased appears to have died due to the effects of burn injuries.

7. On 23.09.2009, P.W.16 arrested both the accused. On such arrest, A2 gave a voluntary confession and based on the disclosure statement, P.W.16 recovered a plastic can, in the presence of P.W.7 and another witness. A1 also gave a confession statement and based on his disclosure statement, P.W.16 recovered the receipt issued by Manapuram Finance for pledging jewels. On completing investigation, P.W.16 laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove its case, on the side of the prosecution, as many as 16 witnesses were examined and 21 documents were exhibited, besides 6 Material Objects.

9. Out of the said witnesses, P.W.1 is the father of the deceased, he turned hostile. P.W.2 is a close relative of P.W.1, who has also turned hostile. P.W.3 is the son of P.W.1 and brother of the deceased. He too turned hostile. P.W.4, landlord of the accused, has spoken about the frequent quarrel between the deceased and the accused. P.Ws.5, 6 and 7 have turned hostile. P.W.8, Village Administrative Officer, who is a mahazar witness, has spoken about the recovery of M.O.1, Plastic can. P.W.9, the then Head Constable of respondent police, has spoken about the registration of First Information Report, based on the statement of the deceased. P.W.10, the then Sub-Inspector of police, has spoken about the commencement of investigation and the alteration of First Information Report from 307 IPC to 302 IPC, after the death of the deceased. P.W.11, Head Constable, has spoken about the submission of alteration report to the Judicial Magistrate. P.W.12, Head Constable, has spoken about taking the body of the deceased and handing over the same for Postmortem. P.W.13, Judicial Magistrate, No.IV, Salem, has spoken about record the dying declaration of the deceased. The dying declaration is marked as Ex.P.12. P.W.13 has further deposed that when he recorded the dying declaration, the deceased was conscious and she was fit enough to give statement. P.W.14 is the Doctor, who admitted the deceased in the hospital. According to P.W.14, at the time of admission, the deceased told her that she poured kerosene and set fire to herself and she issued Accident Register (Ex.P.14). According to P.W.15, Doctor, working in Mohan Kumara Mangalam Medical Collage Hospital, he conducted postmortem on the body of the deceased and gave final opinion regarding the cause of death. P.W.16, Investigating Officer, has spoken about the investigation done by him and examination of witnesses and filing of final report in this case.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They did not choose to examine any witness or mark any documents.

11. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

12. We have heard Mr. Udaya Shankar, learned counsel for the appellants and Mr. Maharaja, learned Additional Public

Prosecutor, appearing for the State and we have also perused the records, carefully.

13. The learned counsel for the appellants would submit that all the material witnesses turned hostile and the conviction is based only on the dying declaration. He further contended that at the time of admission in the hospital, at 10.25 a.m., on 21.09.2009, the deceased has stated to the doctor that she poured kerosene and set fire to herself and P.W.14, the Doctor, who admitted the deceased in the hospital has also issued Accident Register stating that it is a case of self immolation. Thereafter, after admitted in the hospital, on the same day, at 2.30 p.m., the deceased is said to have given a statement Ex.P1 before P.W.9, the then to Head Constable that A-1 has poured kerosene and set fire and she has also stated in the statement that it is only her husband, A1, admitted her in the hospital. At the time of giving the above statement, P.W.1, the father of the deceased was also present there. Thereafter, before P.W.13, the Judicial Magistrate, the deceased has given dying declaration that A-1 poured kerosene and set fir on her. There is inconsistency in the dying declaration and in the absence of any other corroborative evidence, the dying declaration cannot be believed and sought for setting aside the judgment.

14. Per contra, the learned Additional Public Prosecutor submits that the deceased has given a dying declaration before the judicial magistrate and the Judicial Magistrate, after confirming the fitness of the deceased, recorded the statement, in which, she has clearly implicated the accused and hence, the dying declaration of the deceased is sufficient to convict the accused.

15. We have considered the above submissions.

16. In the instant case, all the material witnesses have turned hostile. The father of the deceased, brother of the deceased and other neighbours have all turned hostile. Only based on the dying declaration of the deceased, the trial Court has convicted the appellants. It is settled law that dying declaration can be solely relied upon for convicting an accused, provided it is genuine, consistent and reliable and it should be voluntary. In the present case, while the deceased was admitted in the hospital, at about 10.25 a.m., she has stated that she poured kerosene on her own and set fire to herself and it is a self immolation and P.W.14, the doctor, has also given evidence to that effect. But, after the admission in the hospital, in the statement given to P.W.9, at 2.30 p.m., she has stated that it was only her husband, who poured kerosene and set fire on her and thereafter, he took her to the hospital. It is pertinent to note that at the time of giving that statement, P.W.1, her father was also present, but, he did not support the case of the prosecution. Subsequently, at about 2.55 p.m., before the

Judicial Magistrate, she has given a different version that only A-1 poured kerosene and set fire to her and then he doused the fire and took her to the hospital in an ambulance and admitted her. Thus, there are 3 dying declarations of the deceased and in each dying declaration, she has given different versions and it is not consistent. Hence it creates a serious doubt. Further, there is no concrete evidence let in to connect A2 in this case, except she being the mother of A1.

17. Apart from that, all the material witnesses, including the father, brother and other close relatives of the deceased have turned hostile and there is no other corroborative evidence to support the dying declaration. In the absence of any corroborate evidence, we are of the opinion that it is highly unsafe to convict the accused on the basis of the inconsistent dying declarations of the deceased. In the said circumstances, the appellants are entitled for acquittal. Hence, the judgment of the court below is set aside and the appellant is acquitted.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused by the learned I Additional District and Sessions Judge, Salem, in S.C.No.168 of 2010, by the judgment dated 17.03.2014, are hereby set aside. The appellants/accused are acquitted of the charges levelled against them. Fine amount, if any paid by the appellants, shall be refunded to them. Bail bonds, if any, executed by the appellant shall stand discharged.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

mrp

To

- 1.The Judicial Magistrate No.II,
Salem.
- 2.Do Through the Chief Judicial Magistrate,
Salem.
- 3.The I Additional District and Sessions Judge,
Salem.
- 4.Do Through the Principal Sessions Judge,
Salem.

5.The Superintendent,
Central Prison for Women,
Vellore.

6.The Superintendent,
Central Prison,
Coimbatore.

7.The District Collector,
Salem.

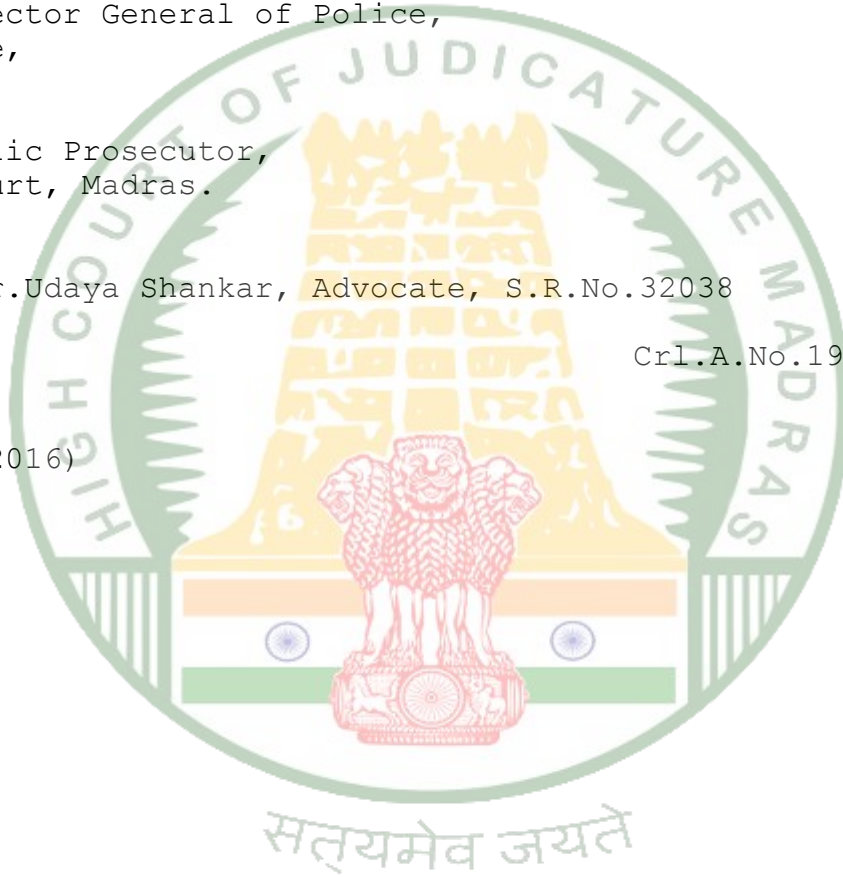
8.The Director General of Police,
Mylapore,
Chennai.

9.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Udaya Shankar, Advocate, S.R.No.32038

Crl.A.No.194 of 2014

MG (CO)
CA(28/12/2016)



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