

BAIL SLIP

Crl.A.No.504/2014:

The Petitioner/sole accused namely K.Anitha, W/o.G.Karthik @ Karthikeyan was directed to be released on bail as per order of this Court dt.13.10.15, and made in MP.No.1/15 in Crl.A.No.504/14 on the file of this Court.

Crl.A.No.505/14:

The Petitioner/Accused 1-4 namely 1.Elayaraja, S/o.Chimathambi @ Govindaraj, 2.Parvathi, W/o.Chinnathambi @ Govindaraj, 3.Chinnathambi @ Govindaraj, S/o.Ramasamy Pillai and 4.Karthik @ Karthikeyan, S/o.Chinnathambi @ Govindaraj were directed to be released on bail as per order of this Court dt.9.10.15 and made in MP.No.1/15 in Crl.A.No.505/14 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.504 & 505 of 2014

Smt. K.Anitha .. A.5/Appellant in Crl.A.No.504/2014

1.Elayaraja
2.Parvathi
3.Chinnathambi @ Govindaraj
4.Karthik @ Karthikeyan

.. Accused 1 to 4/Appellants in

Crl.A.No.505/2014

सत्यमेव जयते
vs

State rep. by

Inspector of Police,
Velankanni Police Station,
Nagapattinam District.

(Crime No.44 of 2012) .. Respondent in both Crl.As/Complainant in
both Appeals

Common Prayer in both Criminal Appeals:- These Criminal Appeals have been filed under Section 374 (2) Cr.P.C., against the judgment passed by the learned Mahalir Fast Track Judge, Nagapattinam in S.C.No.92 of 2012 dated 17.09.2014.

In Crl.A.No.504 of 2014:-

For Appellants :Mr.C.S.Dhanasekaran
For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.505 of 2014:-

For Appellants :Mr.B.Kumar, Senior Counsel
for Mr.P.Ezhilnilavan
For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

(Common Judgement of the Court was delivered by S.Nagamuthu.J)

The appellant in Crl.A.No.504 of 2014 is A.5 and the appellants in Crl.A.No.505 of 2014 are A.1 to A.4 respectively in S.C.No.92 of 2012, on the file of the Mahila Fast Track Court, Nagapattinam. They stood charged for offences under Sections 498 (A) & 302 I.P.C., in the alternative Section 302 r/w 34 I.P.C. By judgment dated 17.09.2014, the trial Court convicted all the five accused for offences under Sections 498(A) & 302 r/w 34 I.P.C., and sentenced A.1 to A.5 to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for three months for the offence under Section 498(A) I.P.C., and to undergo imprisonment for life and to pay a fine of Rs.3,000/- each in default to undergo simple imprisonment for one year for the offence under Section 302 r/w 34 I.P.C. The trial Court has ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellants/accused 1 to 5 are before this Court with these Criminal Appeals.

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

The deceased in this case was one Mrs.Chitra. 10 years prior to the occurrence, she was given in marriage to A.1. A.2, A.3, A.4 & A.5 are the mother, father, brother and sister respectively of A.1. All these accused and the deceased were living together as a joint family. The deceased started demanding A.1 to set up a separate house for them. This was not agreeable for all the accused, as they wanted the deceased to continue the joint family status. Out of the same, there were frequent quarrels between them. It is alleged that on 05.12.2012, out of the said motive, A.2 & A.3 poured kerosene on the deceased and A.1, A.4 & A.5 set fire to her. The deceased while in flames, cried for help. P.W.8, the neighbour of the deceased rushed to the house and found the deceased in flames and informed about the occurrence to P.W.1. P.W.1 along with P.Ws.2 to 4 immediately rushed to the place of occurrence at 6.20 pm on 05.12.2012. At that time, the deceased was conscious and she told that her husband, father-in-law, mother-in-

law, brother-in-law & sister-in-law poured kerosene and set fire to her. P.W.10 - Dr.Mohanned Sirajudin found 100% burn injuries on the body of the deceased. He admitted the deceased as in patient and gave intimation to the Police. On the same day at 7.00 pm, on receiving intimation from the hospital, P.W.9, the learned Judicial Magistrate No.2, Nagapattinam rushed to the hospital. P.W.10, after examining the deceased, certified that she was conscious. P.W.9 made certain queries to the deceased and from the answers elicited, he was satisfied that the deceased was in a fit state of mind to make dying declaration. Then P.W.9 recorded the dying declaration of the deceased. In the said dying declaration, the deceased told that her husband, mother-in-law, father-in-law, brother-in-law and co-sister poured kerosene on her and all of them set fire to her.

3.On getting intimation from the hospital, P.W.16, the then Sub Inspector of Police, Velankanni Police Station rushed to the hospital. At 7.30 pm on 05.02.2012, he recorded the statement of the deceased. At that time, the deceased was conscious. On returning to the Police Station, he registered a case in Crime No.44/2012 at 9.00 am for offences under Sections 147, 342, 307 I.P.C. Ex.P.14 is the F.I.R. Ex.P.4, is the dying declaration. He forwarded both the documents to Court, which were received by the learned Judicial Magistrate at 5.00 am on 06.02.2012.

4.P.W.17, the then Inspector of Police took up the case for investigation. He went to the place of occurrence. Prepared an observation mahazar and a rough sketch in the presence of witnesses. He also recovered the plastic can found at the place of occurrence and he also recovered certain partially burnt materials found at the place of occurrence. The deceased succumbed to the injuries on the same day. P.W.17, thereafter, went to the hospital conducted inquest on the body of the deceased and forwarded the same for post mortem. P.W.15 - Dr.Lungavaram conducted autopsy on the body of the deceased on 06.02.2012 at 12.30 pm. He found (i) burn injury found throughout the body and (ii) a lacerated injury measuring 1 x 0.5x5 cm on the right side of the head and he gave opinion that the death of the deceased was due to burn injuries. P.W.17 arrested all the accused on 06.02.2012. On completing investigation, he laid charge sheet against all the accused.

5.Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove the case of the prosecution, as many as 17 witnesses were examined and 18 documents were exhibited besides 3 Material Objects.

6.Out of the said witnesses, P.W.1 is the brother of the deceased; P.W.2 is the sister of the deceased; P.W.3 is the brother-in-law of P.W.1 and P.W.4 is the father of the deceased. They have stated that the deceased was insisted for setting up for separate family for her and her husband and the same was not agreeable for these accused. They have further stated that on account of the same, there were frequent quarrels between the

accused and the deceased. They have also further stated that on 05.02.2012 at 5.45 pm, P.W.4 received information from P.W.8 - Mr.Panneerselvam that the deceased had sustained burn injuries. They have further stated that when they enquired after reaching the house of the deceased, the deceased told them that A.2 to A.5 poured kerosene on her and A.1 set fire to her. P.Ws.5 & 6 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.7 is the daughter of the deceased. She has stated that on the day of occurrence, there was a quarrel between all these accused and the deceased and when she went out for a while and then returned, she found the deceased in flames. She has further stated that on hearing the alarm raised by the deceased, P.Ws.1 & 2 came there and they found the deceased with flames. P.W.9 has spoken about the judicial dying declaration recorded by him at 7.00 pm on the day of occurrence. P.W.10 has stated that when he admitted the deceased in the hospital, she told that all these accused and her co-sister poured kerosene and set fire. P.W.11 has spoken about the chemical examination conducted by him on the material objects. P.W.12 has spoken about the arrest of the accused. P.W.13 has spoken that he took the F.I.R., and handed over the same to the learned Magistrate concerned. P.W.14 has spoken to the effect that he handed over the dead body of the deceased to the Doctor for post mortem. P.W.15 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.Ws.16 & 17 have spoken about the investigation done and the final report filed in this case.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not chose to examine any witness nor did they mark any documents on their side. Their defence was a total denial.

8. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment. Challenging the same, the appellants/accused 1 to 5 are before this Court with these Criminal Appeals.

9. We have heard Mr.C.S.Dhanasekaran, learned counsel for the appellant in Crl.A.No.504/2014; Mr.B.Kumar, learned Senior Counsel for the appellants/A.1 to A.4 in Crl.A.No.505 of 2014; Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

10. In this case, the prosecution mainly relies on the dying declarations made by the deceased at three different occasions to three different authorities and also the earliest dying declaration made to P.Ws.1 to 4. P.Ws.1 to 4 have stated that when they reached the house of the deceased, the deceased told them that A.2 to A.4 poured kerosene and A.1 set fire to her. Thus, according to the earliest statement, these five accused alone are responsible for the injuries sustained by her. When the deceased was admitted at the hospital at 6.20 pm, she made a statement to P.W.10, the Doctor, and at that time, she told that all these five accused and

her co-sister poured kerosene and set fire to her. Thus, in the second dying declaration, the deceased had implicated not only these five accused but the co-sister of the deceased also. She further told that all these six persons poured kerosene and set fire to her. The next dying declaration is the one which was recorded by P.W.9, the learned Judicial Magistrate No.2, Nagapattinam at 7.00 pm on 05.02.2012. In that dying declaration, the deceased has stated that her husband, father-in-law, mother-in-law, brother-in-law and co-sister poured kerosene and set fire to her. In this judicial dying declaration, the deceased had not implicated her sister-in-law. She has stated that all these five people mentioned in the judicial dying declaration poured kerosene and set fire to her. The last dying declaration is the one recorded by P.W.16, the Inspector of Police (Ex.P.4), upon which, the case was registered. In that, the deceased told that these five poured kerosene and set fire to her.

11.From the narration of these facts, it is crystal clear that there is no consistency among these multiple dying declarations made by the deceased. The sister-in-law of the deceased about whom there is allegation in the two dying declarations, there is no further reference in the subsequent dying declarations and also there is no further reference about the fact that who actually set fire to the deceased. The statement made in the multiple dying declarations is also not consistent. It is settled law that when there are multiple dying declarations, which are inconsistent with each other, unless the Court is able to prefer a particular dying declaration and to reject the other dying declarations for the sound reasons, it is not possible to act upon any particular dying declaration.

12.In this case, in view of the above inconsistency, we find it difficult to act upon any of the dying declarations. Further, the deceased had made an attempt to rope the entire family of A.1 in this matter. That is the reason why, in two dying declarations, the deceased has roped her co-sister who is not an accused in this case. It is quite obvious that the deceased had been tutored by P.Ws.1 to 4. That is why the deceased had made lot of improvements in the subsequent dying declarations, at every stage.

13.The learned counsel for the appellants would submit that the deceased had committed suicide by setting fire to herself. The learned counsel has pointed out that, in the observation mahazar, it is mentioned that the door was broke opened. We find some substance in the said argument. Had it been true that all the accused were inside the house and they only set fire on the deceased, there would have been no need to broke open the house, after the occurrence. There was no investigation in respect of the break open of the doors. Though, this is not a vital point in favour of the accused, it also creates some doubt in the case of the prosecution.

14.At any rate, as we have already pointed out, it is too difficult to act upon the dying declarations made by the deceased

which are inconsistent with each other and that the possibility of tutoring cannot be ruled out. Above all, the very fact that the entire family members of the accused had been roped in and in two of the dying declarations, the deceased had roped even her co-sister who is not an accused in this case, we are of the view that the dying declarations made by the deceased are the result of tutoring and therefore, we cannot act upon the same.

15. In view of the above discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubt. Therefore, the criminal appeals are liable to be allowed and the appellants are entitled for acquittal.

16. In the result, the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants/A.1 to A.5 by the learned Mahalir Fast Track Judge, Nagapattinam in S.C.No.92 of 2012, dated 17.09.2014, are set aside and the appellants/A.1 to A.5 are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/A.1 to A.5, shall stand discharged.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The Judicial Magistrate No.I, Nagapattinam.
- 2.-do- thro' The Chief Judicial Magistrate, Nagapattinam.
3. The Mahalir Fast Track Judge, Nagapattinam.
- 4.-do- thro' The Principal Sessions Judge, Nagapattinam.
5. The District Collector, Nagapattinam.
6. The Director General of Police, Mylapore, Chennai.
7. The Superintendent, Women Central Prison, Trichy.
8. The Superintendent, Central Prison, Cuddalore.
9. The Inspector of Police, Velankanni Police Station, Nagapattinam.
10. The Public Prosecutor, High Court, Madras.
11. The Section Officer, Criminal Section, High Court, Madras.

skv(co)

krd 22/7