

BAIL SLIP

The Appellant herein namely J.Prabhu, S/o.Jayaraj, accused in S.C.No.403 of 2010 on the file of District and Sessions Judge, Villupuram was released on bail as per order of this Court dated 22.09.2015 and made in M.P.No.1 of 2015 in CrI.A.No.504 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-07-2016

CORAM

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

CRL.APPEAL No.504 of 2015

J.Prabhu ... Appellant/Accused

-Vs-

The State, rep.by
The Inspector of Police,
Villupuram Town Police Station,
Villupuram,
Villupuram District. ... Respondent/Complainant

Appeal against the judgment, dated 21.04.2015, made in S.C.No.403 of 2010 on the file of Principal Sessions Court, Villupuram.

For Appellant : Mr.C.D.Johnson

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

JUDGMENT

(Judgment of the Court was delivered by S.Nagamuthu,J.)

The appellant is the sole accused in S.C.No.403 of 2010 on the file of Principal Sessions Court, Villupuram. He stood charged for the offence under Section 302 IPC. By judgment, dated 21.04.2015, the trial Court convicted him for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and pay fine of Rs.10,000/-; in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. The deceased in this case was one Mrs.Anitha. The accused is her husband. It was a love marriage between the accused and the deceased. The deceased was working as a teacher in a Government School, whereas the accused had no work and no income. But, the accused was spending lavishly from and out of the earnings of the deceased. The accused also slowly became a drunkard. He used to develop quarrels with the deceased frequently in drunken state and to harass her. The deceased had borrowed a sum of Rs.5.00 lakhs in a few instalments and gave the same to the accused. Thus, there was no smooth running of the matrimonial life between the accused and the deceased.

2.2. On 20.03.2010, P.W.1, the father of the deceased, received a phone call from the deceased that the accused was harassing her in drunken state. Then, after a few days, the deceased had brought their child and left her at the house of P.W.1. In the evening, around 09.00 a.m. on 22.03.2010, the deceased and the accused came together to the house of P.W.1 and took away the child.

2.3. It is alleged that on the same day, sometime past 09.00 p.m., P.W.1 received a phone call that the deceased had sustained burn injuries and she was being taken to hospital. Immediately, P.W.1 and other family members rushed to Villupuram Government Hospital, from where they took the deceased to Puducherry Government Hospital.

2.4. While in the hospital, according to the case of the prosecution, P.W.2, the son of P.W.1 enquired the deceased and at that time, the deceased told that her husband namely, the accused poured kerosene and set fire to her. Despite treatment, the deceased died on 23.03.2010.

2.5. Thereafter, P.W.1 went to Villupuram Town Police Station and made a complaint at 10.00 p.m. on 23.03.2010. P.W.24, the then S.I. of Police, Villupuram Town Police Station, on receipt of the complaint, registered a case in Crime No.122 of 2010 under Section 174 (iii) Cr.P.C. Ex.P-17 is the F.I.R. He forwarded both the documents to the Court. P.W.26, Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch, in the presence of P.W.3 and another witness. At his request, P.W.17, the Executive Magistrate, held inquest on the body of the deceased and forwarded the same for post-mortem. P.W.23, Dr.Sivaraman, conducted autopsy on the body of the deceased and gave opinion that the death of the deceased was due to burn injuries. P.W.26 thereafter, altered the case into one under Section 302 IPC. The accused surrendered before the Magistrate Court on 21.04.2010. On 23.04.2010, P.W.26 took

police custody of the accused. While in custody, the accused made a disclosure statement, in which he disclosed the place where he had hidden a plastic can and a match box. In pursuance of the same, they were recovered under a mahazar. On completing investigation, P.W.26 laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC and the accused denied the same. In order to prove the case, on the side of prosecution, as many as 26 witnesses were examined, 21 documents and 10 material objects were marked.

4. Out of the said witnesses, P.W.1, the father of the deceased, has stated about the frequent quarrels between the accused and the deceased. He has also stated that in drunken state, the accused used to harass the deceased. He has further stated that he went to the hospital on getting information that the deceased had been taken to hospital with burn injuries, and when his wife enquired her, the deceased told her that the accused poured kerosene and set fire to her. P.W.2 is the brother of the deceased. He has stated that when he and his mother enquired the deceased, she told that it was this accused who poured kerosene and set fire to her. P.W.4 is a neighbour of the deceased. She has not stated anything incriminating against the accused. She has stated that when she went to the house of the deceased, the deceased was with burn injuries and she was taken to hospital. P.Ws.5,6 and 7 have turned hostile and they have not supported the case of the prosecution. P.Ws.8,9 and 10 are the other neighbours. They have not stated anything incriminating against the accused. P.W.11 has turned hostile. P.W.12 is yet another neighbour. He also stated that he heard about the occurrence and went to the place of occurrence. P.W.13 has spoken only on hearsay information. P.W.14 also spoke on hearsay information. P.W.15 has turned hostile. P.W.16 has spoken about the disclosure statement made by the accused while in custody and the recovery of plastic can and match box. P.W.17 is the Executive Magistrate, who has held inquest on the body of the deceased. He has spoken vividly about the same. P.W.18 is a forensic expert, who has stated about the chemical analysis conducted on the material objects. She has stated that there were traces of kerosene. She has also stated that there was no bloodstain on any of the material objects. P.W.20 has also spoken about the chemical analysis report. P.W.21, the then Judicial Magistrate No.II, Villupuram, has stated that on receiving intimation from the hospital, he went to the Government General Hospital, Puducherry, on 23.03.2010 at 02.30 a.m. After ascertaining that the deceased was in a fit state of mind to give a dying declaration, he recorded the dying declaration of the deceased between 03.00 a.m. and 3.25 a.m. In the judicial dying declaration, the deceased, except

telling that she poured kerosene to herself and set fire, has not made any allegation against the accused. P.W.22 is the doctor, who admitted the deceased at the Government General Hospital, Puducherry, on 23.03.2010 at 03.00 a.m. He has stated that he gave opinion to the learned Judicial Magistrate that the deceased was in a fit state of mind to give a dying declaration. P.W.23 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.24 has spoken about the registration of the case and P.W.25 has spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused, he denied the same as false. Further, he did not choose either to examine any witness or to mark any document on his side. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. That is how, he is before this Court with this appeal.

6. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the materials carefully.

7. In this case, the prosecution relies on the oral evidence of P.W.2, the son of P.W.1, who has stated that when he and his mother had gone to the hospital, the deceased told them that it was this accused, who poured kerosene and set fire to her. Relying on this statement as dying declaration, the trial Court has convicted the accused. The learned counsel for the appellant would point out that in the judicial dying declaration recorded by P.W.21, the deceased had told that she poured kerosene to herself and set fire. Thus, according to the said judicial dying declaration, it was a case of self-immolation. Thus, there are two dying declarations ; one spoken by P.W.2 and the other recorded by learned Judicial Magistrate, P.W.21. Among these two dying declarations, we prefer the dying declaration made to the learned Judicial Magistrate, because, there is every sanctity with the judicial dying declaration, which contains the words, spoken by the deceased and there is no chance for any embellishment. We cannot prefer the evidence of P.W.2, because he is an interested witness. In any way, we cannot reject the judicial dying declaration, by preferring the dying declaration made to P.W.2. In such view of the matter, we find that there is no evidence beyond reasonable doubt that it was this accused who poured kerosene and set fire to the deceased. The alternative theory that it was a case of self-immolation is substantiated by the judicial dying declaration. Therefore, in our considered view, the appellant is entitled for acquittal.

8. Accordingly, this Criminal Appeal is allowed and the appellant is acquitted of the charge. The conviction and sentence imposed on the appellant by the trial Court are set aside. The Bail Bonds executed by the appellant shall stand cancelled and the fine amount, if paid, shall be refunded.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
Villupuram.
2. The Judicial Magistrate No.I,
Villupuram.
3. The Chief Judicial Magistrate,
Villupuram.
4. The District Collector,
Villupuram.
5. The Director General of Police,
Mylapore, Chennai 04.
6. The Inspector of Police,
Villupuram Town Police Station,
Villupuram,
Villupuram District.
7. The Superintendent,
Central Prison, Cuddalore.
8. The Public Prosecutor,
High Court, Madras 104.
9. The Section Officer,
Criminal Section,
High Court, Madras 104.

+1cc to Mr.C.D.Johnson, Advocate, S.R.No.37757

CRL.A.No.504 OF 2015

KGK(CO)

CA(11/08/2016)

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