

Bail Slip

The Appellant/and 2/Accused No.1 and 2 namely 1 Saravanan S/o Muthu @ Muthusamy 2 Muthu @ Muthusamy S/o Perumal are directed to be released on bail as per order of this court dated 08.10.2015 in CrI.MP.1/2015 in CrI.A.534/2015

The Appellant 3 /Accused 3 namely Pappa, W/o Muthu @ Muthusamy is directed to be released on bail as per order ddated this court dated 26.11.2015 in CrI.MP.2/2015 in CrI.A.534/2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.534 of 2015

1. Saravanan

2. Muthu @ Muthusamy

3. Pappa

Appellants

Vs

State rep. by
Inspector of Police,
Sankari Police Station,
Salem District,

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the order of conviction and sentence imposed by the learned I Additional Sessions Judge, Salem in S.C.No.238 of 2014 dated 31.07.2015.

For Appellants : Mr. A.S.Baalaji

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

JUDGEMENT

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

The appellants are A1 to A2 in S.C.No.238 of 2014 on the file of the learned I Additional Sessions Court, Salem. All the accused stood charged for the offences under Sections 498 (A), 120(B), 302 and 302 r/w.120(B) IPC. By judgment dated 31.07.2015, the trial Court convicted and sentenced all the accused as detailed below:-

Accused	Section of law	Sentence
A.1 to A.3	498(A) I.P.C.	Rigorous imprisonment for three years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months each.
A.1 to A.3	120(B) I.P.C.	Imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months each
A.2 & A.3	302 I.P.C.	Imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months each
A.1 to A.3	302 r/w. 120(B) I.P.C.	Imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months each

The trial Court has ordered the above sentences to run concurrently. 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:-

The deceased, in this case is one Divya. She is the wife of A1. A2 and A3 are father and mother of A1. Marriage between deceased and A1 took place in the year 2011. At the time of marriage, sufficient dowry was given by P.W.1 to the deceased. Not satisfied with the same, all the accused harassed the deceased demanding dowry. Apart from that A1, who is a drunkard, quarreled with the deceased frequently. In the above circumstances, the parents of the deceased took her to their house and the deceased was with them for some time. A1 took the deceased to his house 10 days prior to the occurrence. On 21.03.2012, all the accused conspired together and A3 poured kerosene on the deceased and A2 set fire on her. On hearing the news, P.W.1, father of the deceased, rushed to the scene of occurrence and he took the deceased to the hospital in a 108 ambulance.

3. P.W.7, Assistant Professor, Mohan Kumara Mangalam Medical College Hospital, Salem, admitted the deceased in the hospital. At that time, deceased told him that 3 known persons poured kerosene and set fire on her and P.W.7 found 80 to 90% burn injuries and issued Accident Register, Ex.P.6. He also sent a intimation memo, Ex.P.7 to the respondent police.

4. P.W.10, Sub-Inspector of police, on receipt of memo from the hospital, proceeded to the hospital at 2.15 p.m., and recorded the statement of the deceased, Ex.P.9. Based on Ex.P.9, P.W.10, registered a case in Crime No.150 of 2012, under Section 307 IPC against unknown persons. Thereafter, he forwarded the First Information Report, Ex.P.10, to the concerned Judicial Magistrate and to the higher officials. He also sent a memo to the learned Judicial Magistrate for recording dying declaration.

5. P.W.6, the learned Judicial Magistrate No.5, Salem, on receipt of the memo, reached the hospital and after being satisfied that deceased was conscious and in a fit state of mind to give a dying declaration, he recorded the dying declaration of the deceased, Ex.P.4. In which, deceased stated that A1 to A3 were demanding dowry and harassing her and While she was sleeping, at about 5.30 p.m., poured kerosene and set fire on her, and her mother-in-law, A3, is responsible, while she woke-up she did not find anybody in the house.

6. P.W.15, Inspector of Police, on receipt of First Information Report, on 22.03.2012, proceeded to the hospital and recorded the statement of the deceased. Subsequently, at about 6.30 a.m., the deceased succumbed to injuries. Hence, P.W.15 altered the First Information Report into Section 302 IPC, and the alteration Report is Ex.P.20. Then, at 7.00 a.m., he proceeded to the scene of occurrence and prepared an Observation

mahazar, Ex.P.1 and a Rough Sketch, Ex.P.21, in the presence of P.W.5 and another witness. P.W.15 also recovered burnt dress of the deceased (M.O.3), under a mahazar, Ex.P.2. Thereafter, P.W.15, conducted inquest on the dead body of the deceased, at the hospital, in the presence of panchayathars and prepared Inquest Report, Ex.P.22, and sent the dead body for postmortem with a memo through P.W.9, Head Constable.

7. P.W.13, Assistant Professor, working in Mohan Kumara Mangalam Hospital, Salem, conducted postmortem on the dead body of the deceased, on 22.03.2012, at about 3.15 p.m., and found the following injuries:-

" INJURIES : An extensive dermo epidermo burns over entire face, front and back of neck, front and back of chest, front of abdomen, both gluteal region, front and back of both lower limbs including foot, both upper limbs including hand. External genitalia-intact. Burnt area shows hypreamic. Cutdown injury seen over at medial malleolus. No other external injuries seen on the body. "

Ex.P.16 is the Postmortem Certificate. He gave Final opinion, Ex.P.18, that the deceased appears to have died due to the effects of burns injuries.

8. On 24.03.2012, at about 8.30 a.m., P.W.15 arrested the accused and on such arrest, A2 voluntarily gave a confession and based on the disclosure statement of A2, Ex.P.24, P.W.15, recovered a plastic can(M.O.1) and match box(M.O.2) under Mahazar Ex.P.25 and remanded the accused for judicial custody. After completion of investigation, P.W.15 laid charge sheet against the accused.

9. 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 15 witnesses were examined and 29 documents were exhibited, besides 3 Material Objects.

10. Out of the said witnesses, P.W.1 is the father of the deceased. He has spoken about the harassment meted out by the deceased and after hearing the news, he rushed to the scene of occurrence and found the deceased with burn injuries and the deceased told him to save her. She also told him that the accused cheated her. Then, he took her to the hospital and admitted her in the hospital. P.W.2 is the mother of the deceased. According to her, after hearing the news, they

reached the scene of occurrence and deceased told them that it is only A2 and A3 set fire on her.

11.P.Ws.3 and 4 turned hostile. P.W.5, Village Administrative Officer, who is a witness to the mahazar, has spoken about the recovery of M.O.3. P.W.6, Judicial Magistrate, recorded the dying declaration of the deceased. P.W.7, Doctor, who admitted the deceased in the hospital and issued an Accident Register, Ex.P.6. According to P.W.7, at the time of admission, the deceased told him that three known persons poured kerosene and set fire on her. P.W.8 is a Doctor, who gave a certificate that the deceased was in a fit state of mind to the Judicial Magistrate for recording the dying declaration. P.W.9, Head Constable, identified the dead body of the deceased for postmortem and after postmortem, he handed over the dead body to P.W.1. P.W.10, Sub-Inspector of police, has spoken about the registration of the case. P.W.11 and P.W.12 turned hostile. P.W.13, Doctor, conducted postmortem on the dead body of the deceased and gave final opinion regarding the cause of death. P.W.14, photographer, taken photographs of the dead body of deceased at the place of occurrence. P.W.15, Investigating Officer, has spoken about the investigation done by him and examination of witnesses and filing of final report in this case.

12.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, Ex.B1, namely, Extract of guidelines in clinical procedures safety issued by the World Health Organization, has been marked. They did not choose to examine any witness.

13.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.

14. We have heard Mr. A.S.Baalaji, learned counsel for the appellants and Mr.Maharaja, learned Additional Public Prosecutor, appearing for the State and we have also perused the records, carefully.

15. It is a case of circumstantial evidence and prosecution mainly relied upon the dying declaration given by the deceased. There are 3 dying declarations. First dying declaration was given by the deceased, on 21.03.2012 at 7.15

p.m., before P.W.7, doctor, who admitted the deceased in the Mohan Kumara Mangalam Medical College Hospital, Salem and at that time, the deceased told him that three known persons had poured kerosene and set fire on her.

16. P.W.6, learned Judicial Magistrate, No.5, Salem, on receipt of a memo from the police, on 21.03.2012, at 9.15 p.m., recorded the dying declaration. At that time, the deceased told P.W.6 that all the accused have demanded dowry and harassed her and while she was sleeping in his house, at 5.30 p.m., poured kerosene and set fire on her. She has also stated that A3 is responsible for that and when she woke up, nobody was in the house.

17. Subsequently, at about 11.35 p.m., P.W.10, Sub-Inspector of Police, recorded the statement of the deceased in the hospital. At that time, the deceased told him that at about 5.30 p.m., while she was sleeping in her house, some unknown persons poured kerosene and set fire on her. While she shouted out of pain, the neighbours came there and doused the fire. Thereafter, P.W.2 and others took her to the hospital and admitted her.

18. A careful perusal of all the dying declarations, we found inconsistency in the dying declarations. In the first dying declaration before the doctor, who admitted the deceased in the hospital, she has stated that some three known persons poured kerosene and then before the Judicial Magistrate, she has given Judicial dying declaration that while she was sleeping in her house, somebody poured kerosene and set fire on her and her mother-in-law, A3 alone is responsible for that and when she woke up, she found nobody in the house. In the third dying declaration before P.W.10, she has stated that some unknown persons poured kerosene and set fire on her. Hence, there is a material contradiction in all the three dying declarations. In the first dying declaration she has not specifically implicated anybody and in the second dying declaration, she has impleaded A3, mother-in-law. In the third dying declaration, she has stated that some unknown persons poured kerosene and set fire on her.

19. Apart from that according to P.W.1, father of the deceased, when he came to the scene of occurrence, immediately after the occurrence, the deceased told him that the accused had cheated her and she did not implicated anybody.

20. Since there are inconsistency and material contradictions in the dying declarations, it is highly unsafe to rely upon them to convict the accused. Apart from the dying declarations, there is no other circumstance available to

connect the accused with the crime. Hence, we are of the considered view that the prosecution has failed to prove the circumstances beyond any reasonable doubt unerringly pointing the guilt of the accused. Hence, the appellants are entitled for acquittal. Hence, the judgment of the court below is set aside and the appellant is acquitted.

21. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants by the learned I Additional Sessions Judge, Salem, in S.C.No.534 of 2015, dated 31.07.2015, are hereby set aside. The appellants 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 appellants shall stand discharged.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. I Additional Sessions Judge,
Salem.
- 2 The Judicial magistrate No.I, Sankari
- 3.The Public Prosecutor,
High Court, Madras.
- 4 The Inspector of Police
Sankari Police Station,
Salem District

5 The Superintendent
Central Prison, Coimbatore

6 The Superintendent
Central Prison for Women, Vellore

+1cc to Mr.A.S. balaji, Advocate, S.R.No.41499

rk(CO)
md(01/02/2017)

Cr1.A.No.534 of 2015