

Bail Slip:-

The Appellant herein/Accused No. 1 & 2 Viz., Manian 2.S.Karthikeyan were directed to be released on bail as per order of this court dated 13.8.2008 and made in M.P.1/2008 in CrI.A.No.328 of 2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.328 of 2008

1. Manian
2. S.Karithikeyan ... Appellants/ Accused
Nos.1 & 2

vs.

State by
The Inspector of Police,
Komaralingam Police Station
Coimbatore District ... Respondent
(Cr.No.198/2004)

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.271 of 2006 dated 4.3.2008 on the file of the Sessions Judge, Magalir Neethimandram, Coimbatore.

For appellants : Mr.B.Kumarasamy for
Ms.P.Indumathi

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

JUDGMENT

The convictions and sentences dated 4th day of March, 2008 passed in Sessions Case No.271 of 2006 by the District and Sessions, Magalir Neethimandram, Coimbatore are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the first accused is the husband of elder sister of one Gopalakrishnan, who is none other than the husband of the victim by name Baby. The second accused is a close relative. The said Baby and Gopalakrishnan

have loved each other and their marriage has been performed on 31.5.2000. After marriage, both the accused have caused torture to the said Baby and on 12.11.2004, the second accused has doused Kerosene on the person of the said Baby and the first accused has set fire on her. After occurrence, the father of the said Baby by name Venkatachalam, as defacto complainant, has given a complaint and the same has been registered in Crime No.198 of 2004.

3. On receipt of complaint, the Investigating Officer, viz., P.W.7, has taken up investigation, examined connected witnesses and after completing investigation, laid a final report on the file of Judicial Magistrate No.1, Udumalpet and the same has been taken on file in P.R.C.No.14 of 2005.

4. The Judicial Magistrate No.1, Udumalpet, after considering the facts 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, Coimbatore and the same has been taken on file in Sessions Case No.271 of 2006.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed first charge against both the accused under Section 498-A, second charge against them under section 307 of Indian Penal Code and the same have been read over and explained to them. The accused have denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 7 have been examined and Exhibits P.1 to 7 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record, has found both the accused guilty under Section 498-A of Indian Penal Code and sentenced them to undergo 2 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- upon each of them with usual default clause. The accused 1 and 2 have also been found guilty under Section 307 of Indian Penal Code and sentenced to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- upon each of them with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellants.

9. The learned counsel appearing for the appellants/accused has sparingly contended that on 12.11.2004 itself, the victim has been admitted in hospital, wherein she has given a statement to the effect that only due to accidental fire at the time of cooking, she sustained injuries and subsequently the father of the victim, viz., P.W.1 has given a false complaint against both the accused and only on that basis, a case has been registered and the Investigating Officer, without conducting proper investigation, has erroneously filed a final court and the trial court, without considering the statement given by the victim, has erroneously found both the accused guilty under sections 498-A and 307 of Indian Penal Code and therefore, the convictions and sentences passed by the trial court are liable to be set aside.

10. The learned Additional Public Prosecutor has contended that in the instant case, the victim has been examined as P.W.2 and her specific evidence is that both the accused have tortured her and on 12.11.2004, the second accused has doused Kerosene on her person and the first accused has set fire on her and the trial court, after considering the evidence given by P.W.2 has rightly found both the accused guilty under sections 498-A and 307 of Indian Penal Code. Further, the prosecution has adduced proper medical evidence. Therefore, the convictions and sentences passed by the trial court are not liable to be set aside.

11. On the basis of the rival submissions made on either side, the Court has to look into as to whether the evidence of P.W.2 can be a sole basis for inviting convictions and sentences against the appellants/accused under sections 498-A and 307 of Indian Penal Code.

12. It is seen from the records that the occurrence has taken place on 12.11.2004 and immediately after occurrence, P.W.2 has been admitted in Government Hospital, Udumalpet, where she has given a statement to the effect that at the time of cooking, due to accidental fire, she sustained injuries. After recording a statement from P.W.2, for the reasons best known to the prosecution, a separate complaint has been obtained from P.W.1, who is none other than the father of the victim, wherein the role alleged to have been played by both the accused has been mentioned. Since the victim herself has given a statement to the effect that only due to accidental fire she sustained injuries, it is needless to say that Ex.P.1, Complaint, is nothing but a concocted document.

13. It has already been pointed out that the victim herself has given a statement to the effect that at the time of cooking, due to accidental fire she sustained injuries. Therefore, it is needles to say that Ex.P.1 as well as evidence given by P.W.2 cannot be a basis for inviting convictions and sentences against

the appellants/accused.

14. The trial court, without considering the statement given by the victim, has erroneously believed the materials found in Ex.P.1 as well as evidence given by P.W.2. In view of the discussions made earlier, this Court is of the view that the convictions and sentences passed by the trial court are not factually and legally sustainable and altogether, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed against the appellants/accused in S.C.No.271 of 2006 by the trial court are set aside. The appellants/accused are acquitted. Bail bonds, if any executed by them, shall stand cancelled. Fine amounts, if any paid by them, are ordered to be refunded forthwith.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ajr

To :

1. The Sessions Judge, Magalir Neethimandram, Coimbatore
2. The Judicial Magistrate No.6, Coimbatore
3. Do thro the Chief Judicial Magistrate, Coimbatore
4. The Superintendent
Central Prison, Coimbatore
5. The Inspector of Police,
Komaralingam Police Station, Coimbatore District
6. The Public Prosecutor, High Court, Chennai

Copy to

The Section Officer
Criminal Section, High Court, Madras

1 cc to Ms. P. Indumathi, Advocate, Sr. 808

Crl.A.No.328 of 2008

MSM (CO)
kk 7/1