

BAIL SLIP

Udhayakumar, S/o.Baskar (Appellant/Accused)

The above said appellant/Accused was directed to be released on bail as per order of this Court dt.12.2.13 made in MP.1/13 in Cr1.A.NO.2/13 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 18.07.2016

CORAM:

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

Cr1.A.No.2 of 2013

Udhayakumar ... Appellant

vs.

State, by
The Assistant Commissioner of Police,
M.K.B.Nagar Circle,
Chennai- 600 039.
(Crime No.59 of 2008) ... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 22.06.2012 passed by the learned Sessions Judge, Mahila Court, Chennai, in S.C.No.298 of 2009..

For Appellant : Mr.C.H.Vinobha Gandhi

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

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

The appellant in this appeal is the sole accused in Sessions Case No.298 of 2009, on the file of the learned Sessions Judge, Mahila Court, Chennai. He stood charged for an offence under Sections 498(A) and 302 of IPC. The Trial Court, after trial, by judgement dated 22.06.2012 convicted the appellant/accused for the offence under Section 498(A) of IPC, and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months and convicted him for the offence under Section 302 of IPC, and sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/- in default, to undergo simple imprisonment for one year. Challenging the

above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased in this case one Rathi was the wife of the accused. The marriage between the accused and the deceased took place two years prior to the occurrence. The accused was a drunkard and harassed the deceased to bring money from her parental house. One day prior to the occurrence, the accused asked her to bring a sum of Rs.1,000/- from her parental house, but she refused. Thereafter, on 23.09.2006 at about 1.00 a.m., the accused poured kerosene and set fire on her. Immediately, the mother-in-law of the deceased took her to the Kilpauk Medical College Hospital, Chennai.

(ii) P.W.3, the Doctor, working in casualty ward attached to Kilpauk Medical College Hospital, admitted the deceased at about 1.50 a.m., and issued Accident Register (Ex.P8). At the time of admitting the deceased in the hospital, the deceased told the Doctor that it was an accidental fire; while she was cooking, the stove burst and she got fire on her nighty and she suffered burn injuries.

(iii) P.W.17, the Sub Inspector of Police, attached to the respondent police, received the information from the Hospital, proceeded to the hospital and recorded the statement of the deceased and based on the statement (Ex.P9), he registered a case in Crime No.1000/2006 for accidental fire. Subsequently, P.W.14, the learned 18th Metropolitan Magistrate, Egmore, Chennai, received a memo from the Inspector of Police for recording dying declaration of the deceased. He reached the Hospital at about 8.00 a.m., and after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration, after obtained necessary certificate from the duty doctor, he recorded the dying declaration (Ex.P13), where, the deceased told her that her husband poured kerosene and set fire on her.

(iv) P.W.16, the Inspector of Police, working in the respondent police, on receipt of the FIR, commenced the investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar (Ex.P5), drew a Rough Sketch (Ex.P14) and recovered plastic bottle (M.O.1), burnt match stick (M.O.2), match box (M.O.3), half burnt saree (M.O.4), half burnt inskirt (M.O.5) and half burnt jacket (M.O.6) under Mahazar (Ex.P6). He arrested the accused and on such arrest, he voluntarily given a confession in the presence of witnesses and he examined the witnesses and recorded their statements. Then, he sent the accused for Judicial custody. Subsequently on 24.09.2006, the deceased succumbed to injuries. Then, P.W.16, altered the case into one under Section 302 IPC and alteration report (Ex.P16), then he handed over the investigation to P.W.18 his successor.

(iii) P.W.18, the Assistant Commissioner of Police, working in the respondent police, continued the investigation, sent a requisition letter to the RDO for conducting inquest over the dead body and handed over the investigation to P.W.19 his successor. P.W.12, the Tahsildar, working in the Purasaiwalkam - Perambur Taluk Office, conducted inquest over the dead body of the deceased in the presence of Panchayatdars and the inquest report is Ex.P11.

(iv) P.W.11, the Doctor, working in the Kilpauk Medical College Hospital, Chennai, conducted postmortem on the dead body of the deceased and found the following injuries.

Injuries:

Epidermo - dermo epidermal burn with denuded cuticle exposing the reddish area seen over the face, neck, both sides of the chest and abdomen, front of both upper limbs (includes palms) and part of back of forearm (46% Burns).

No other injury are made out.

He opined that the deceased appear to have died of hypovolemic shock due to burns. He has issued Postmortem Certificate Ex.P10.

(v) P.W.19, the Assistant Commissioner of Police, working in the respondent police, conducted further investigation, examined the post mortem Doctor and other witnesses and recorded their statements. After completion of investigation, PW19 laid the charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed above but the accused denied the same as false. In order to prove the case of prosecution, as many as 19 witnesses were examined and 19 documents were exhibited and 6 material objects were marked.

4. Out of the above witnesses examined, P.W.1 is the father of the deceased. He has spoken about the quarrel between the accused and the deceased. According to him, after the occurrence, the deceased told him that her husband poured kerosene and set fire on her. P.W.2 is the aunt of the deceased. She has spoken about the quarrel between the accused and the deceased and harassment by the accused. P.W.3 is the husband of P.W.2. He has spoken about the quarrel between the accused and the deceased. P.W.4 is the grand father of the deceased. He has spoken about the harassment meted out by the deceased. P.W.5 is another aunt of the deceased. According to her, after the occurrence, in the hospital, the deceased told her that her husband poured kerosene and set fire on her. P.W.6 is the sister of the deceased. P.W.7 is another aunt of the deceased. P.W.8 is the neighbour of the deceased and he witnessed the observation mahazar and recovery of material objects. P.W.9, Doctor, working in the Kilpauk Medical

College Hospital, Chennai, attended the deceased in the Hospital at about 1.50 a.m. on 23.09.2006, according to him, at the time of admission, the deceased told him that it is an accidental fire, while she was cooking, the stove bursted and she got fire. He has issued Accident Register (Ex.P8). P.W.10, Doctor, working in the Kilpauk Medical College Hospital, Chennai. He attested the statement given by the deceased. P.W.12, the Tahsildar, working in the Purasaiwakkam - Perambur Taluk, conducted inquest over the dead body and prepared inquest report (Ex.P11). P.W.13, Personal Assistant to the Sub Collector, sent the RDO report to the respondent police. The learned 18th Metropolitan Magistrate, Egmore, Chennai, who recorded the dying declaration of the deceased at about 8.00 a.m., on 23.09.2006 was examined as P.W.14. P.W.15 was the Doctor working in the Kilpauk Medical College Hospital, Chennai. Before recording dying declaration, he examined the deceased and gave certificate. According to him, before giving dying declaration, the deceased was conscious and in a fit state of mind to give dying declaration. P.W.17, the Sub Inspector of Police, working in the respondent police, received the information from the Hospital, recorded the statement of the deceased and based on the statement, registered a case and prepared first information report. P.W.18, the Assistant Commissioner of Police, working in the respondent police, continued the investigation. P.W.19, the Assistant Commissioner Police, working in the respondent police, continued the investigation, examined the witnesses and recorded their statements and after completion of investigation, laid the charge sheet against the accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused examined his mother as D.W.1 and no document was marked on his side.

6. Having considered all the above, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.C.H.Vinobha Gandhi, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. It is a case of circumstantial evidence. We are conscious of the legal position that in a case based on circumstantial evidence, the circumstances projected by the prosecution have to be proved beyond reasonable doubt and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principles in mind, we analyse the facts of the present

9. The prosecution mainly replied upon the dying declaration of the deceased to prove the guilt of the accused. There are three dying declaration in this case. After the occurrence, the deceased was admitted in the Kilpauk Medical College Hospital, Chennai at about 1.50 p.m., on 23.09.2006. P.W.9 was the Doctor working in the casualty ward admitted the deceased in the hospital and at the time the deceased told him that it was an accidental fire, while she was cooking, the stove burst and got fire. Then, P.W.17, the Sub Inspector of Police, working in the respondent police, on receipt of the information from the Hospital, recorded the statement of the deceased. At that time, the deceased informed him that it is an accidental fire and only her mother-in-law D.W.1, doused the fire and her mother-in-law and father-in-law took her in auto and admitted her in the hospital. At the time of recording the statement, P.W.17 also obtained certificate from the duty Doctor. Based on the statement of the deceased, P.W.17 registered the case as accidental fire. Subsequently, at about 8.00 am., the learned 18th Metropolitan Magistrate, Egmore, Chennai recorded the dying declaration of the deceased. At the time, the deceased changed her version and told him that her husband poured kerosene and set fire on her. Hence, we are of the considered view that there is a material contradiction in the above dying declarations. In the first two dying declarations, the deceased stated that it was only an accidental fire, while she was cooking, the stove was bursted and subsequently she changed her version and given a Judicial dying declaration stating that the accused poured kerosene and set fire on her. Considering the dying declarations in the light of the prosecution witnesses P.Ws.1 and 2, the first dying declaration was given at about 1.50 a.m., and the second dying declaration was given at about 4.30 a.m., and thereafter only the relatives of the deceased, namely, P.Ws.1 and 2 saw the deceased at 5.00 p.m.. P.W.3 saw the deceased at about 5.30 a.m. and P.W.4 also saw her at about 6.00 a.m. P.W.5 and other relatives of the deceased saw her after 6.00 a.m., and only thereafter at about 8.00 a.m., the learned Metropolitan Magistrate recorded the judicial dying declaration. Hence, the possibility of tutoring by the relatives of the deceased before giving judicial dying declaration cannot be ruled out. As there is inconsistency in the version of the deceased in giving the first two dying declarations and the last one, such inconsistency is certainly vital in this case. Hence it is wholly unsafe to convict the appellant based on the last dying declaration alone in the absence of any other material evidence to corroborate it. Hence, we are of the considered view that the accused is entitled for acquittal.

10. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the Appellant in S.C.No.298 of 2009 dated 22.6.2012 on the file of the learned Sessions Judge, Mahalir Court, Chennai is set aside and the

appellant/accused is acquitted of all the charges levelled against him and bail bond, if any, executed by him shall stand cancelled and the fine amounts paid by him is ordered to be refunded forthwith.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

- 1.The Seesions Judge,
Mahila Court,
Chennai.
 - 2.The Additional Sessions Judge, Mahalir Neethimandram,
Chennai.
 - 3.The Chief Metropolitan Magistrate, Egmore, Chennai.
 - 4.The Assistant Commissioner of Police,
M.K.B. Nagar Circle,
Chennai.
 - 5.The Superintedent, Central Prison, Puzhal, Chennai.
 - 6.The V Metropolitan Magistrate, Egmore, Chennai.
 - 7.The Public Prosecutor,
High Court, Madras.
- +1 cc to Mr.C.H.Vinobha Gandhi, Advocate,sr.40526.

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Crl.A.No.2 of 2013

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