

BAIL SLIP

The Petitioners/Accused Viz Ramasamy, male aged 66 years and Sadharam, female aged 61 years were directed to be released on bail as per order of this court dated 12.09.2014 and made in MP.No.1/2014 in CrI.A.No.679/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.679 of 2013

1.Ramasamy

2.Mrs.Sadharam

..Appellants/Accused 1 &2

Vs

State by
The Inspector of Police,
Veppur Police Station,
Veppur,
Cuddalore District
Crime No.194/2012

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment rendered by the learned Sessions Judge, Mahila Court, Cuddalore in S.C.No.301 of 2012 dated 04.09.2013.

For Appellants : Mr.A.G.Rajan

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

JUDGEMENT

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

The appellants are the accused 1 and 2 in S.C.No.301 of 2012 on the file of the learned Sessions Judge, Mahila Court, Cuddalore. They stood charged for offences under Sections 498A, 294(b) & 302 r/w 34 I.P.C. By judgment dated 04.09.2013, the trial Court convicted them for offence under Section 302 r/w 34 I.P.C., alone and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the accused 1 and 2/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 was one Mrs.Ezhilmathi. She was married to one Mr.Ranganathan, who is the son of the accused herein, eight years before the occurrence. At the time of marriage, gold jewels and other household articles were presented by the parents of the deceased. It is alleged that these two accused who are the father-in-law and mother-in-law respectively of the deceased demanded more dowry from the deceased and harassed her. It is further alleged that on 23.07.2012, at 8.00 am, at the house of the deceased, both the accused abused the deceased in filthy language and then A.1 poured kerosene and A.2 through a lighted match stick on her. The deceased sustained serious burn injuries on her body. The house of the parents of the deceased is situated just 30 houses away from the house of the deceased. On hearing about the occurrence, P.W.1 - the father, P.W.2 - the mother and P.Ws.3 & 4 - the neighbours had rushed to the house of the deceased. They found the deceased with burn injuries. When they enquired the deceased, as to how she sustained burn injuries, she told them that A.1 poured kerosene and A.2 set fire on her. P.W.5 is yet another neighbour who has also stated the same. Thereafter, one Mr.Ilayaraja, the brother of the deceased took the deceased in an Ambulance to the Government Hospital, Virudhachalam. Then she was conscious. She told the Doctor that at 11.45 pm, on 23.07.2012, at her house, her father-in-law poured kerosene and set fire. P.W.9 found 90% burnt injuries on her body. P.W.9 made entry of the said statement, in the accident register and then, gave intimation to the learned Judicial Magistrate, Virudhachalam.

3.P.W.8, the then Judicial Magistrate No.2, Virudhachalam, on getting intimation from the hospital, rushed to the hospital at

1.35 pm, on 24.07.2012. P.W.9 certified that the deceased was conscious. P.W.8 was satisfied that the deceased was in a fit state of mind to make a dying declaration. Thereafter, he recorded the dying declaration of the deceased, vide Ex.P.7. In the said judicial dying declaration, the deceased told that A.1 poured kerosene and A.2 set fire on her.

4.P.W.10, the then Special Sub Inspector of Police, on receipt of the intimation from the hospital, went to the hospital on 24.07.2012 and recorded the statement of the deceased, in the presence of the Doctor under Ex.P.10. On returning to the Police Station, at 6.00 am, on 24.07.2012, he registered a case in Crime No.194/2012 for offences under Sections 294(b), 498A & 307 I.P.C. Ex.P.11 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 4.45 pm, on 24.07.2012.

5.The case was taken up for investigation by P.W.11, the then Inspector of Police. He went to the place of occurrence at 7.00 am, on 24.07.2012 and prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. Then, he recovered a plastic can; a match box and a half burnt polyester saree (M.Os.1 to 3), under a mahazar, in the presence of same witnesses. Then, he examined P.Ws.1 to 5 and recorded their statements. On the same day at 11.00 am, he arrested both the accused, in the presence of P.W.6 and another witness. On such arrest, A.1 gave a voluntary confession. But no discovery of any fact was made out of the same. On returning to the Police Station, he forwarded both the accused to Court, for judicial remand.

6.On 29.07.2012, at 9.55 pm, the deceased succumbed to the injuries in the hospital. On receipt of the death intimation, P.W.11 altered the case into one under Sections 294(b), 498A & 302 I.P.C. Ex.P.13 is the alteration report. On the same day, between 1.00 pm and 3.00 pm, he conducted inquest on the body of the deceased, in the hospital and forwarded the body for post mortem. P.W.7-Dr.Manojkumar Mohandi, conducted autopsy on the body of the deceased on 30.07.2012, at 3.05 pm. He found 90% of burnt injuries, on the body of the deceased. He opined that the death was due to septicemia following burns. Ex.P.4 is the post mortem certificate and Ex.P.6 is the final opinion of P.W.7 regarding the cause of death. On completing investigation, P.W.11 laid charge sheet against both the accused.

7.Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against these accused. Both the accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 14 documents were exhibited, besides 3 material objects.

8.Out of the prosecution witnesses, P.Ws.1 to 5 have stated that the deceased told them that A.1 poured kerosene and A.2 set fire to her. P.W.9 - Dr.Saminathan, has stated that the deceased told him that her father-in-law poured kerosene and set fire. In the judicial dying declaration, recorded by the learned Judicial Magistrate, the deceased told that A.1 poured kerosene and A.2 set fire on her. In the complaint made to P.W.10 also, the deceased told that A.1 poured kerosene and A.2 set fire on her.

9.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, no witness was examined and no document was marked. Their defence was a total denial.

10.Having considered all the above, the trial Court found the accused guilty for offence under Section 302 r/w 34 I.P.C., and accordingly, sentenced them to undergo imprisonment for life. Aggrieved over the same, the accused/appellants are before this Court with this Criminal Appeal.

11.We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor and also perused the records carefully.

12.In this case, the prosecution relies on the multiple dying declarations made by the deceased. P.Ws.1 to 5 have stated that when they went to the house of the deceased, they found the deceased with burn injuries and she told them that her father-in-law poured kerosene and mother-in-law set fire on her. P.Ws.1 to 5 told the said fact for the first time after the registration of the case. The earliest statement of the deceased is found in the accident register recorded by P.W.9. The deceased was brought to the hospital by her brother, by name, Mr.Ilayaraja. For the reasons best known to them, the prosecution has not examined the brother of the deceased viz., Mr.Ilayaraja. At the earliest point of time, when the deceased was admitted in the hospital, she told the Doctor that her father-in-law poured kerosene and set fire on her. Subsequently, in the judicial dying declaration, the deceased had told that A.1 poured kerosene and A.2 set fire on her. Thus, there is material contradiction between these two dying declarations.

13.Above all, from the time of occurrence, the deceased was accompanied and surrounded by her family members. Admittedly, there was some misunderstanding between the accused and the family members of the deceased. The deceased was taken to the hospital by her brother, by name, Mr.Ilayaraja. In the first statement made by the deceased to the Doctor, the deceased told that her father-in-law alone poured kerosene and set fire on

her. But, in the second statement made to the learned Judicial Magistrate concerned, the deceased had told that A.1 poured kerosene and A.2 set fire on her. This material improvement made by the deceased implicating A.2 in the subsequent dying declaration would only go to probablize that she had been tutored by Mr.Ilayaraja, or by the other relatives. Assuming that the said statement made to the Doctor, being the earliest statement, requires weightage, since, it is completely contradicted by the subsequent dying declaration recorded by the learned Judicial Magistrate, in which, the deceased told that A.1 poured kerosene and A.2 set fire on her. In our considered view, it is not safe to act on the earliest statement made to the Doctor since that statement itself might have been due to tutoring. If the second dying declaration that fire was set only by A.2 is believed then, the first dying declaration made to the Doctor that it was A.1 who poured kerosene and set fire on her becomes false. Thus, these two dying declarations are completely contradicting each other and they make each one as unbelievable.

14.It is needless to point out that the trial Court itself has disbelieved the evidences of P.Ws.1 to 3, that these accused demanded dowry and harassed the deceased. Similarly, the trial Court has disbelieved the evidence of these witnesses, in respect of the charge under Section 294(b) I.P.C. Thus, the trial Court itself has partly believed the prosecution case. Further, the State has not made any appeal against the acquittal of the appellants for offence under Sections 498A & 294(b) I.P.C.

15.In view of all these anamolies and doubts, we find it difficult to sustain the conviction and sentence imposed on the appellants. We hold that the prosecution has failed to prove the case beyond reasonable doubt.

16.In the result, the Criminal Appeal is allowed and the conviction and sentence for the offence u/s.302 r/w 34 IPC imposed on the appellants by the learned Sessions Judge, Mahila Court, Cuddalore in SC.No.301 of 2012 by the judgment dated 04.09.2013 are hereby set aside. The appellants are acquitted and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

-s/d-

Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

To

1.The Judicial Magistrate
No.I Virudhachalam

2.The Chief Judicial Magistrate
Cuddalore

3.The Judicial Magistrate
Chengalpattu

4.The Sessions Judge,
Mahila Court, Cuddalore.

5.do-Thro The Principal Sessions Judge
Cuddalore

6.The Inspector of Police
Veppur Police Station
Veppur
Cuddalore District

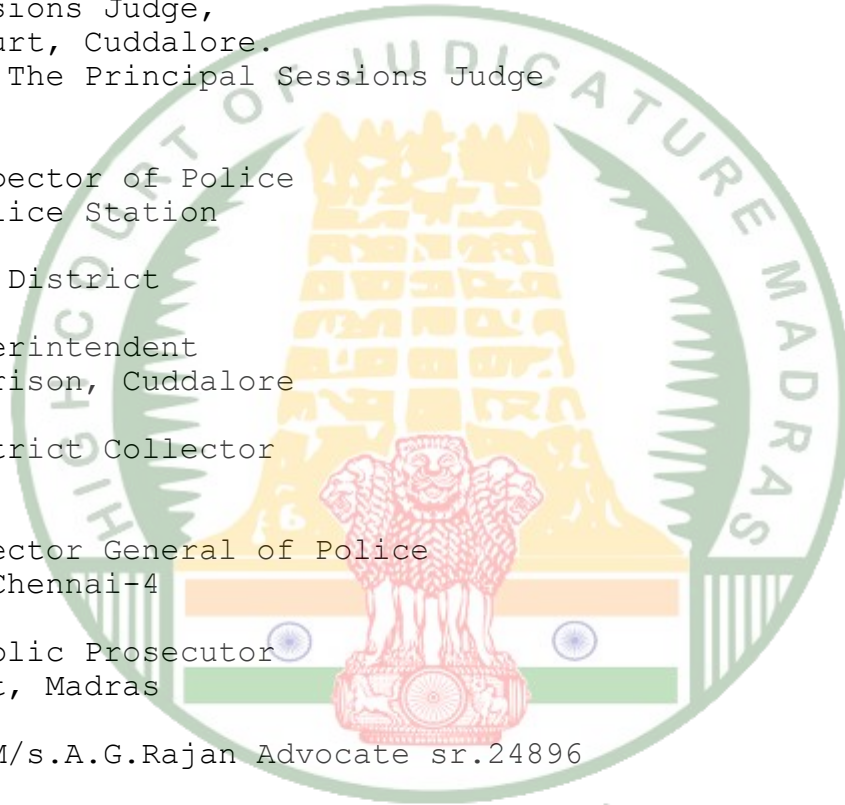
7.The Superintendent
Central Prison, Cuddalore

8.The District Collector
Cuddalore

9.The Director General of Police
Mylapore Chennai-4

10.The Public Prosecutor
High Court, Madras

+1 cc to M/s.A.G.Rajan Advocate sr.24896



Crl.A.No.679 of 2013

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