

Bail Slip

The accused/Apellant namely Rajesh S/o.Selvaraj, was directed to be released on bail as per order of this Court in M.P.No. 1 of 2014 in Crl.A.382 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.382 of 2014

Rajesh
S/o.Selvaraj

... Appellant/Accused

-vs-

State represented by
The Inspector of Police,
Erode South Police Station,
Erode, Erode District.
Crime No.405 of 2012
Respondent/Complainant

...

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of learned Sessions Judge, Mahila Court, Erode, passed in S.C.No.106 of 2013 on 25.06.2014.

For Appellant : Mr.N.Kumanan

For Respondent : Mr.M.Mohammed Riyaz
Government Advocate [Crl.side]

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J U D G M E N T

This appeal arises against the judgment of learned Sessions Judge, Mahila Court, Erode, passed in S.C.No.106 of 2013 on 25.06.2014, convicting appellant/accused for offences u/s.498-A and 306 IPC and sentencing him to 1 year S.I. for offence u/s.498-A IPC and 5 years R.I and fine of Rs.5,000/- i/d 6 months S.I. for offence u/s.306 IPC.

2. The prosecution case is that the accused, husband of the deceased, demanded dowry and harassed the deceased owing to which, on 06.05.2012, the deceased set her infant son and herself on fire and they both died. PW-1, father of the deceased, preferred Ex.P1, complaint, on 06.05.2012 at 17.30 hours. PW-11, Sub Inspector of Police, registered a case in Crime No.405 of 2012 on the file of respondent for offences u/s.302 IPC and 174 Cr.P.C, 498-A, 306 IPC and 4 of Dowry Prohibition Act. The First Information Report is Ex.P6. PW-16, Inspector of Police, took up investigation on 06.05.2012, visited the place of occurrence, prepared Ex.P3 - Observation Mahazar and Ex.P19 - Rough Sketch in the presence of PW-5 and another. PW-16 seized MO-1 - a Water Bottle and two other small articles under Ex.P4 - seizure mahazar. PW-16 examined PWs.1, 5, 9 and two others and recorded their statements. On 07.05.2012 at about 06.00 a.m., PW-16 went to Erode Government Hospital and conducted inquest on the body of the deceased in the presence of panchayadhars. The inquest reports are Exs.P20 and P21. PW-16 sent a requisition through PW-15, Inspector, towards conduct of postmortem. Ex.P9 - Post-mortem certificate of deceased Geetha reads as follows:

"Post-mortem Certificate

Regarding the body of a female aged about 31 years, named Geetha. Requisition received at 10.20 a.m. on 7/5/12 from the Inspector of Police, of South P.S., Erode with his letter No.405/12 dated 6/5/12. Body in charge of Police Constable No.Gr. I PC 918 named Indirani.

Identification and caste marks - I.D. Marks could not be made.

The body was first seen by the undersigned at 12.40 p.m. on 7/5/12. Its condition then was Pugilistic attitude +.

Post-mortem commenced at 12.40 p.m. on 7/5/12.

Appearances found at the post-mortem - Symmetrical.

All areas of the body are burnt. Tongue bitten. All internal organs are congested. Stomach contains 200 ml of partially digested food particles and white coloured fluid. Stomach & its contents, intestine & its contents, liver, kidney and preservative are sent for chemical analysis.

Cause of death (viscard) - pending analysis of viscera.

Time of death - 22 to 26 hrs prior to autopsy."

Ex.P14, Post-mortem certificate of deceased Aarunyan, reads as follows:

"Post-mortem Certificate

Regarding the body of a male aged about 4 years, named Aarunyan. Requisition received at 10.25 a.m. on 7/5/12 from the Inspector of Police, of Erode South P.S. with his letter No.405/12 dated 7/5/12. Body in

charge of Police Constable No.HC 1709 named Ravikumar. Identification and caste marks - I.D. Marks could not be identified.

The body was first seen by the undersigned at 1.40 p.m. on 7/5/12. Its condition then was Pugilistic attitude +

Post-mortem commenced at 1.40 p.m. on 7/5/12.

Appearances found at the post-mortem - Symmetrical.

All areas of the body are burnt. All internal organs are congested. Stomach contains 50 ml. of partially digested rice particles. Stomach & its contents, intestine & its contents, liver, kidney & preservative are sent for chemical analysis of viscera.

Cause of death - pending viscera analysis.

Time of death - 22 to 26 hours prior to autopsy."

PW-16 examined PWs.1, 2, 6, 10 and others and recorded their statements. At 12.30 p.m., PW-16 arrested the accused near Veerappan Chattiram, Mariamman temple, in the presence of witnesses and recorded his voluntary confession statement. PW-16 send the accused to judicial custody. He forwarded the seized articles to Court under Form-95. As PW-17, Inspector of Police, in charge of Erode South Police Station, went on medical leave, PW-16 conducted investigation in the case and on PW-17 taking charge, PW-16 handed over further investigation to him on 15.05.2011. PW-17 examined PWs.3, 4, 5, 6, 10 and others and recorded their statements. Witness Thilaga has produced Ex.P23, Car Delivery Note, to PW-17. Since some details were not filled in Ex.P23, the same was marked with objection. PW-17 forwarded the viscera of deceased for chemical analysis along with Ex.P16 - requisition letter, addressed to Judicial Magistrate. PW-17 examined PWs.11, 14, 15 and others and recorded their statements. PW-17 obtained MO-4 - photographs and MO-5 - CD. On obtaining Ex.P18, Chemical Analysis Report, PW-17 examined PW-12 Doctor and recorded his statement. PW-17 obtained Ex.P13, Final Opinion Report, regards death from PW-12, Doctor and recorded his statement. PW-17 examined PW-4, Manager of Federal Bank and recorded his statement. PW-17 altered the First Information Report to reflect offences u/s.498-A, 306 IPC and 4 of Dowry Prohibition Act. The Alteration Report is Ex.P24. On completion of investigation, he filed a charge sheet before learned Judicial Magistrate II, Erode and upon committal, the case was tried in S.C.No.106 of 2013 on the file of learned Sessions Judge, Mahila Court, Erode.

3. Before trial Court, prosecution examined 17 witnesses and marked 24 exhibits and 5 material objects. On the side of defence, 2 witnesses were examined and 31 exhibits were marked. When questioned u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court, under judgment dated 25.06.2014, while acquitting appellant/accused of offence

u/s.4 of Dowry Prohibition Act, convicted him for offences u/s.498-A and 306 IPC and sentenced him to 1 year S.I. for offence u/s.498-A IPC and 5 years R.I and fine of Rs.5,000/- i/d 6 months S.I. Trial Court directed that sentences run concurrently.

4. Heard learned counsel for appellant and learned Government Advocate [Crl.side]. Perused the records.

5. Learned counsel for appellant submitted that appellant had been orphaned at the age of one and had fought his way up to a position of financial stability and dignity. Appellant was not guilty of any wrong doing and had showered love and affection on his wife, the deceased. He had bought a Maruthi Esteem Car and obtained her a licence. Learned counsel submits that after marriage, appellant has included deceased as one of the partners in the concerns run by him. Appellant has also purchased a plot in the name of deceased. Learned counsel submits that the above circumstances clearly reveal that appellant has treated the deceased in a loving and caring manner and no accusation could be made against him. It is only upon pressure of family members of deceased to include her brother as one of the partners in businesses run by appellant, the deceased committed suicide.

6. Learned counsel pointed out various discrepancies in the prosecution case as hereunder:

- (i)PW-1, in chief, had deposed to providing 100 sovereigns of gold and a Car as demanded by accused. However, PW-1, in cross, admits that nothing had been stated about demands made by accused in Ex.P1, complaint. So also, in the Section 161(3) Cr.P.C. statement. PW-16, Investigation Officer, has also admitted that neither in the complaint nor in Section 161(3) Cr.P.C. statement, PW-1 has stated about demands made by accused. PW-2, co-brother of PW-1, in chief, deposed to having given jewels, on demand, to accused and of promising to get a Car after one year. PW-2 has not stated so in the complaint and Section 161(3) Cr.P.C. statement.
- (ii)PW-1, in chief, had deposed to providing an Alto Car at the time of marriage. In cross, PW-1 deposed that Car was purchased after one year of marriage, that too, in his name. While in the complaint, nothing had been mentioned about a Car, in the Section 161(3) Cr.P.C. statement, it has not been mentioned when the Car was given. PW-16, Investigation Officer, deposed that PW-1 has not stated that jewels and Car have been given towards dowry and as demanded by accused.
- (iii)PW-1, in chief, deposed that deceased informed him of accused pledging her jewels and that she was driven out of the matrimonial home 4 to 5 times towards getting money. However, nothing has been stated about the incident either in the complaint or in Section 161(3) Cr.P.C. statement.

- (iv) PW-1, in chief, deposed to having purchased the Car in his name by obtaining a loan from State Bank of India. PW-1, in cross, deposed that the Car was purchased for his elder daughter and in the name of his elder son-in-law and of not having EMI receipts. Nothing has been stated either in the complaint or in the Section 161(3) Cr.P.C. statement regards the same. PW-1 did not inform the instalment details to investigation officer.
- (v) While PW-1, in chief, deposed that accused assaulted deceased and demanded a share in property and hence a panchayat was conducted and deceased was sent back to her matrimonial home, in cross, he deposed that the said property belonged to his wife. However, in the complaint, PW-1 has stated that he constructed a building in the said property and accused wanted to run a business in such building. In the Section 161 Cr.P.C. statement nothing has been mentioned there regards. In cross, he has admitted to not reflecting expenses towards the building in his Income Tax Returns. While PW-2, in chief, deposed that after deceased was sent back to her matrimonial home, PW-1 decided to settle the property in her favour and the same was rejected by deceased, nothing has been mentioned about the said incident in the complaint or Section 161(3) Cr.P.C. statement.
- (vi) PW-1, in chief, deposed to his daughter, the deceased, requesting him not to give any share in the property, since, if given, the same would be disposed of by accused and hence, she requested him to retain such property for her son. The said incident has not been mentioned in the complaint or Section 161(3) Cr.P.C. statement.
- (vii) Though PW-3, in cross, deposed to having informed PW-1 that there was a scuffle between accused and deceased on the date of occurrence i.e. 06.05.2012, he claims to have informed PW-1 on 10.05.2012 and of having informed PW-17, Investigation Officer, on 15.05.2012.
- (viii) PW-11, Sub-Inspector of Police, deposed to registering First Information Report on 06.05.2012 at about 05.30 p.m. However, it was also the case of prosecution that police visited the scene of crime, took the accused under custody at 01.30 p.m. and the body was sent for post-mortem at 03.20 p.m. on 06.05.2012. The above clearly revealed that the first complaint was suppressed and the case has been projected as if the investigation started after 05.30 p.m., i.e., after registration of First Information Report relied upon by prosecution.
- (ix) While PW-17, investigation officer, himself has admitted that he has not made any attempt to know the phone numbers of PW-1 and deceased, the prosecution case of deceased calling PW-1 over phone on the date of occurrence was unbelievable.
- (x) PW-17, investigation officer, has admitted that all Section

161(3) Cr.P.C. statements have reach Court only on 22.12.2012, i.e, after a period of ten months.

7. Heard learned Additional Public Prosecutor on the above submissions.

8. First Information Report in the case has been registered for offences u/s.302 IPC and 174 Cr.P.C., 498-A, 306 IPC and 4 of Dowry Prohibition Act and in brackets it has been observed 'murder followed by suicide', apparently to inform that the deceased had doused both the child and herself with kerosene, set the child on fire and then herself.

9. The evidence of PW-8, a neighbour, would go to show that accused was not even present at the time of occurrence. PW-8 has spoken to going over to the house of appellant upon hearing of smoke emanating therefrom, that PW-9, the house owner, was informed and that the accused was informed after getting his phone number from PW-9. PW-9 and the appellant then came to the scene. It was thereafter that the fire service was called for and the matter was informed to the police. PW-1 is the father of deceased wife and PW-2 is his brother-in-law. PW-3, who has spoken to having witnessed appellant/accused abusing his wife and of her retiring to a room in sorrow, between 08.30 and 09.00 a.m. on the date of occurrence, admitted to being a relative of PWs.1 and 2. The mother, sister and brother of deceased wife though cited as list witnesses in the charge sheet, have not been examined. The suicide of deceased wife took place on 06.05.2012. Between 2005 and 2011, appellant and deceased wife stayed together with PW-1. PW-1 has alleged that the accused continuously harassed her and drove her out of the matrimonial home. From the discrepancies between the evidence of PWs.1 to 3 and the complaint and Section 161(3) statements, the prosecution tale of demands and harassment stand falsified. PW-8's narration of the sequence of events renders highly unlikely the registration of First Information Report as late as at 5.30 p.m. We may gather that the mother, sister and brother of the deceased wife have not been examined as they did not wish to support the false prosecution case. There is a wealth of material in the form of defence exhibits which indicate a most congenial bond between appellant and his deceased wife but the consideration thereof is totally unnecessary when the prosecution has failed to produce an iota of reliable evidence in support of its case.

The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Sessions Judge, Mahila Court, Salem, in S.C.No.229 of 2012 on 17.09.2013, are set aside and appellant

is acquitted of all charges. Fine amount, if any, paid shall be refunded Bail bond(s), if any, executed shall stand cancelled.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate, Erode.
- 2.The Chief Judicial Magistrate, Erode.
- 3.The Sessions Judge,
Mahila Court,
Erode.
- 4.The Superintendent,
Central Prison, Coimbatore
- 5.The Inspector of Police,
Erode South Police Station,
Erode, Erode District.
- 6.The Public Prosecutor,
High Court, Chennai.
- 7.The Section Officer,
Criminal records, High Court,
Madras.

+1cc to Mr.N.Kumanan, Advocate SR.No.21905

Criminal Appeal No.382 of 2014

NRI (CO)
GN(27/03/2018)

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