

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Bail Slip:

The Petitioner/Accused viz, Sakthidass, S/o, Chinnasamy is directed to be released or bail as per order of this Court dt.4-6-2008 and made in crl.M.P.No.1 of 2008 in crl.A.No.389/2008.

Reserved on : 15.12.2016

Pronounced on: 06.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.389 of 2008

Sakthidass

... Appellant

vs.

State, by
The Inspector of Police,
All Women Police Station,
Pothanur,
Coimbatore District,
(Crime No.25 of 2005)

... Respondent

Criminal appeal preferred under Section 374 Cr.P.C., against the conviction and sentence imposed on the appellant by the learned Sessions Judge, Mahila Court, Coimbatore in S.C.No.343 of 2006, dated 05.05.2008.

For Appellant : Mr.R.Sreerangan

For Respondent : Mrs.M.F.Shobana,
Gov. Adv. (CrI. Side)

JUDGMENT

The sole accused in S.C.No.343 of 2006 on the file of the Mahila Court, Coimbatore, is the appellant herein. He stood charged for the offences under Sections 307, 498-A IPC, and Section 4 of Dowry Prohibition Act. The trial Court, by judgment, dated 05.05.2008, convicted the accused under Section 307 IPC and sentenced him to undergo rigorous imprisonment for 7 years with a fine of Rs.500/- in default to undergo simple

imprisonment for 3 months and acquitted the accused under Section 498(A) IPC and Section 4 of Dowry Prohibition Act. 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:

P.W.1 is the wife of the appellant/accused. The marriage between P.W.1 and the accused took place on 30.12.1992. thereafter they lived together and out of their wedlock they are blessed with two children. The accused used to harass P.W.1 by demanding dowry, and on 14.07.2005, at about 4.00 p.m., the accused assaulted P.W.1, and cut her hair and he burnt her forearm of P.W.1, with a heated spoon and caused burn injuries. On the next day, on 15.07.2005, P.W.2, the mother of P.W.1, came to their house and P.W.1 informed her about the same, after consulting with P.W.3, uncle of P.W.1, she lodged a complaint with the respondent police. Thereafter, P.W.1 was admitted in the hospital. P.W.7, Sub Inspector of Police, on receipt of the memo from the Government Hospital, Tirupur, went to the hospital and recorded the statement of P.W.1, and based on the statement, he registered a case in Crime No.25 of 2005 for the offences under Sections 498(A), 307 IPC and prepared express First Information Report and sent the same to the higher official and to the jurisdiction Court. P.W.8, Inspector of Police, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.1 and Rough sketch, Ex.P.6, in the presence of the witnesses and recorded the statement of witnesses. On 16.07.2005, he arrested the accused and on such arrest he has voluntarily given a confession and based on the disclosure statement, he recovered a spoon and scissor and hair of P.W.1, which was cut by the accused and removed during the occurrence. Then, he recorded the statement of Doctor. After completing the investigation, he laid a chargesheet for the offences under Sections 498(A) and 307 IPC.

3. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of prosecution, as many as 8 witnesses were examined and 8 documents were marked, besides 3 Material Objects.

4. Out of the witnesses examined, P.W.1 is the victim in this case and she turned hostile. P.W.2 is the mother of the deceased. According to her, on the previous date of occurrence, she went to the house of P.W.1, at that time P.W.1 was suffering from fever. Then she returned back and on the next day at about 8.00 a.m., she went to her house and she saw P.W.1's hairs were cut and removed. Then, she took P.W.1 to the police station and she put her signature in a complaint. Then, they took her to the hospital. P.W.3 is uncle of P.W.1.

According to him, P.W.1 informed him that her husband cut and removed her hair and then, he took her to the police station and lodged a complaint. Then, admitted her in the hospital.

5. P.W.4, who is an employer of P.W.3, informed him that P.W.1 was assaulted by the appellant/accused and for taking her to hospital, he took leave. P.W.5 is the witness to the observation mahazar. P.W.6 is the doctor, who has given treatment to P.W.1 in Government Hospital, Coimbatore. P.W.7 is the sub-Inspector of Police, who registered a complaint. P.W.8 is the investigating officer, conducted investigation and arrested the accused and recorded the statement of the witnesses. After completing the investigation he laid charge sheet.

6. 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 total denial. The accused did not examine any witness nor mark any document on his side.

7. 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 with this appeal.

8. Heard Mr. R.Sreerangan, learned counsel appearing for the petitioner and Mrs.M.F.Shobana, Government Advocate, learned counsel appearing for the respondent .

9. P.W.1 is the injured witness in this case and she turned hostile. Except that, there is no eye-witness to the occurrence. P.W.2 is the mother of P.W.1 and she has simply stated that on the next day of the occurrence she went to the house of P.W.1, where she saw P.W.1's hair was cut and removed and then she took her to the police station and lodged a complaint. P.W.3 is the uncle of P.W.1 and he is only an hearsay evidence. Except that there is no evidence available to prove the guilt of the accused. The injured witness herself has turned hostile, and there is no other evidence available to connect the accused with the occurrence. But, the trial Court convicted the accused stating that there is overwhelming evidence available to show that the accused assaulted P.W.1, the above finding is totally perverse and without any evidence, hence, the judgment of the court below is liable to be interfered with.

10. In the above circumstances, I am of the considered view that there is no evidence available on record to convict the accused under Section 307 IPC and the prosecution has failed to prove the case beyond reasonable doubt, hence, the appellant is entitled for acquittal .

11. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the learned Sessions Judge, Mahila court, Coimbatore, in S.C.No.343 of 2006, by the judgment dated 05.05.2008, is hereby set aside. The appellant is acquitted from the charges levelled against him. The fine amount, if any paid, shall be refunded to him.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

mrp

To

1. The Sessions Judge,
Mahila court, Coimbatore,
2. The Judicial Magistrate, No.I, Pollachi.
- 3.-do- through the chief Judicial Magistrate, Coimbatore
- 4.The Superintendant, Central Prison, Coimbatore
- 5.The District Collector, Coimbatore
- 6.The Director General of Police, Mylapore, Chennai-4
- 7.The Commissioner, Coimbatore
- 8.The Inspector of Police, All Women Police Station
Pothanur, Coimbatore District.
- 9.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.R.Sreerangan, Advocate sr.73827

Cr1.A.No.389 of 2008

pa(co)
ss(30/01/2017)