

BAIL SLIP

The Appellant/ Accused herein viz Nagaraj S/O. Sekar aged about 25 years was released on bail as per order of this court dated 21.06.2007 made in Crl.M.P.NO.1 of 2007 in Crl.A.No.518 of 2007 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.518 of 2007

Nagaraj ... Appellant/Accused

Vs.

State rep. by

Inspector of Police (Law and Order),
Portnovo Police Station,
Cuddalore District.

(Crime No.330 of 2004) ... Respondent/Complanant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code to set aside the order of conviction and sentence passed in S.C.No.364 of 2006 dated 21.05.2007 by the Sessions Judge, Mahila Court, Cuddalore.

For Appellant : Mr.K.Gandhi Kumar

For Respondent : Ms.M.F.Shabana
Government Advocate (Criminal side)

JUDGMENT

The sole accused in S.C.No.364 of 2006, on the file of the Sessions Judge, Mahila Court, Cuddalore, is the appellant herein. He stood charged for an offence under section 306 IPC., and under Section 4 of Tamil Nadu Prohibition (Harassment of Women) Act 1988. The Trial Court convicted the accused under Section 4 of the Tamil Nadu Prohibition(Harassment of Women) Act 1988 and sentenced him to undergo Rigorous Imprisonment for three years and also to pay a fine of Rs.10,000/- in default to undergo three months Rigorous Imprisonment. Aggrieved against the above said conviction and sentence, the appellant is before this Court with the present appeal.

2.The brief facts of the case is as follows:

The deceased in this case one Geetha, is a deaf and dumb. She is the wife of P.W.5, and daughter of P.W.2. The deceased was married to P.W.5 in the year 1999 and was residing in her matrimonial house. On 26.07.2004, the deceased was found missing. When P.W.3, the mother of the deceased went in search of her, subsequently, the deceased came to her parental house. When P.W.3 enquired her, she expressed in signs that the accused had took her to his aunt's house near Paruthikudi Village, where he tortured her, and bring her back, left her in the parental house. Subsequently, on 31.07.2004, she committed suicide in P.W.3's house. P.W.3, mother of the deceased informed P.W.4, the mother-in-law of the deceased and P.W.5, the husband of the deceased, about the suicide. Both of them came to her house immediately. P.W.1-the Village Administrative Officer filed a complaint with the respondent-Police. P.W.15, the Sub-Inspector of Police in respondent Police Station, on receipt of the complaint registered a case in Crime No.330 of 2004 under Section 174 Cr.P.C. and filed F.I.R. and informed the same to his higher officials. P.W.15 took up the investigation and proceeded to the scene of occurrence, prepared observation mahazar, drew a rough sketch and recorded the statement of witnesses. Since the deceased died within seven years of marriage, P.W.13, the R.D.O. conducted inquest on the dead body in presence of Panchayatars and filed the inquest report P.9 and also filed an enquiry report P.10, stating that the death was not due to dowry harassment. P.W.15 continued the investigation, and based on the investigation, he altered the FIR into 306 IPC., and filed alteration report-Ex.P.12, and arrested the accused on 23.09.2004. P.W.12, the Doctor working in the Government Hospital, Chidambaram, conducted the postmortem autopsy on the dead body and gave a report-Ex.P.8. The Doctor has opined that the deceased would appeared to have died of Azhpyxial death due to hanging. Since P.W.15 was transferred, P.W.16, the incumbent Inspector of Police, continued the investigation and after recording the statement of the Doctor, who conducted the postmortem, he filed a charge sheet.

3.Considering all the above materials, the Trial Court framed charges as mentioned in Paragraph one of this judgment for which the accused denied the same.

4.In order to prove this case, prosecution examined 16 witnesses and exhibited 12 documents.

5.Out of the 16 witnesses examined, P.W.1, is the Village Administrative Officer, who has filed the compliant. P.W.2 is the father of the deceased, who was working as a watchman at Chennai. According to him, on 31.07.2004, he received a phone call that her daughter, the deceased committed

suicide. Immediately, he came to the village and he was told that unable to bear the harassment of the accused, his daughter committed suicide. P.W.3 is the mother of the deceased and according to her, the deceased was found missing from 26.07.2004, subsequently, she came back to her parental house with some burn injuries. When the deceased was questioned about her missing and burn injuries, she informed her that the accused took her to his aunt's house, where he tortured her and burnt her with cigarette buds. Thereafter, unable to bear the consequences, within two days she has committed suicide. P.W.4 is the mother-in-law of the deceased. She spoke about missing of the deceased. P.W.5 is the husband of the deceased and he also spoke about the intimacy between the accused and the deceased and also the harassment of the deceased by the accused. P.W.6 is the P.W.3's sister. She only spoke about the missing of the deceased. P.W.7 and P.W.8 turned hostile. P.W.9 is the aunt of the accused, in whose house, the deceased and the accused went and stayed before the occurrence. Even though she turned hostile, during her chief examination, she has admitted both accused and deceased went to her house and stayed there for a night, and on the next day, she sent them out of their house. P.W.10 is the witness to the observation mahazar. P.W.11 is the Head Constable, who handed over the dead body for postmortem. P.W.12 is the Doctor, who conducted the postmortem and gave the report for the cause of death. P.W.13 is the R.D.O, conducted inquest on the dead body and gave the inquest report. P.W.14 is the Sub-Inspector of Police, registered the complaint. P.W.15 is the Inspector of Police, commenced investigation and altered FIR under Section 306 I.P.C. P.W.16 is the another Inspector of Police, continued the investigation and after recording the statements of the witnessed filed the charge sheet.

6. When the above incriminating materials were put forth before the accused under Section 313 of Cr.P.C., he denied the same and he did not examine any witness or marked any documents.

7. Considering all the above materials, the Trial Court convicted the accused under Section 4 of the Tamil Nadu Prohibition(Harassment of Women) Act 1988 and convicted him and sentenced to undergo Rigorous Imprisonment for three years and also to pay a fine of Rs.10,000/- in default to undergo three months Rigorous Imprisonment and acquitted the accused under Section 306 IPC. Challenging the above said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

8. Heard the Mr.K.Gandhi Kumar, learned counsel appearing on behalf of the petitioner and Mrs.M.F.Shabana, Government Advocate (Criminal side) appearing on behalf of the respondent.

9. P.W.3, 4 and 5 are the mother, mother-in-law and husband of the deceased respectively, all of them spoke about the missing of the deceased from 26.07.2004. According to P.W.3, mother of the deceased, on 26.07.2004, she went to the deceased marital home and found her missing, and she searched for her. Subsequently after two days she came to her parental house with burn injuries. When P.W.3, questioned her about the missing and the burn injuries, she spoke to her in signs and informed that, the accused took her forcibly to his aunt's house, where he tortured her and burnt her with cigarette buds, thereafter he brought her back to the village and asked her to commit suicide and went away. P.W.3 consoled her and assured her that she will her father/P.W.2 and settle the issue. Subsequently, after two days she committed suicide. P.W.4 is the mother-in-law of the deceased, who also spoke about the missing of the deceased. P.W.5 is the husband, also spoke about the missing of the deceased. From their evidences, it is seen that the deceased was found missing from her marital house from 26.07.2004. P.W.9 is the aunt of the accused. Even though, P.W.9 turned hostile, in chief examination, she has stated that the accused came with the deceased to her house and stayed in her house for one night and in the next day morning, she had sent both of them to their native place. From the evidence of P.W.9, it is seen that accused took the deceased to P.W.9's house and stayed there for a night. From the above evidence, the prosecution has established that the deceased went along with the accused and stayed with him. It is the evidence of P.W.2 that she found number of burn injuries on the deceased, when P.W.2 questioned her about the same, the deceased informed her that only the accused burnt her with cigarette buds and outraged her modesty. The medical evidence corroborate the same and the postmortem report revealed as many as seven burn injuries were found in the body of the deceased. Apart from that, P.W.12, the Doctor, who conducted the postmortem also found some name written in the left hand of the deceased. From the evidence of prosecution, it could be seen that the deceased went alongwith the accused and stayed with him for sometime and came back to her parental home and committed suicide. Hence, it is proved by the prosecution, that while the deceased was staying with the accused before the death, he only has caused such injuries.

10. Taking into consideration the above materials, the Trial Court convicted the accused for the offence under Section 4 of the Tamil Nadu Prohibition(Harassment of Women) Act 1988. Considering all the above materials, this Court is of the considered view that the prosecution has clearly established the guilt of the deceased and I do not find any illegality or perversity in the judgments of both the Courts below.

11. So far as the quantum of sentence is concerned, the Trial Court convicted the accused under Section 4 of the Tamil Nadu Prohibition (Harassment of Women) Act 1988 and sentenced him to undergo Rigorous Imprisonment for three years and also to pay a fine of Rs.10,000/- in default to undergo three months Rigorous Imprisonment and acquitted the accused for the offence under Section 306 IPC. Taking into consideration the facts and circumstances, the appellant is a poor man and has no bad antecedents and has a family to look after, he is sentenced to undergo one year rigorous imprisonment and pay a fine of Rs.10,000/- in default to undergo three months rigorous imprisonment.

12. In the result, the Criminal Appeal is partly allowed. The conviction of the accused under Section 4 of the Tamil Nadu Prohibition (Harassment of Women) Act 1988 is confirmed and sentence is modified to one year rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo three months rigorous imprisonment. The entire fine amount is to be paid as compensation to P.W.3, the mother of the deceased under Section 357 of Cr.P.C., and the period already undergone by the petitioner is to be given set off under section 428 Cr.P.C.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

1. The Sessions Judge,
Mahila Court,
Cuddalore.

2. The District Munsif Judicial Magistrate Portonovo.

3. The Chief Judicial Magistrate, Cuddalore (for information)

4. The Inspector of Police (Law and Order)
Portonovo police station, Cuddalore dt.

5. The Section Officer, Criminal Section,
High Court, Madras.

6. The Public Prosecutor,
High Court of Madras.

Criminal Appeal No.518 of 2007

VC (16/11/2017)