

BAIL SLIP

That the appellants Viz; Velmurugan aged 23 years S/o.Kalaiyan was directed to be released on Interim bail as per order of this Court dated 06/03/2018 in CrI.A.No.172/17 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CrI.A.No.172 of 2017

Velmurugan

..

Appellant/1st accused

Vs.

State rep.by Inspector of Police
Kachirayapalayam Police Station
Villupuram District.
[Cr.No.353 of 2011]

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence passed by the Learned III additional Sessions Judge, Villupuram @ Kallakurichi against the appellant in S.C.No.400 of 2013 dated 5.4.2016 on one year rigorous imprisonment and with fine of Rs.1,000/- in default to undergo further period of one month simple imprisonment u/s 498(A) IPC and imprisonment for life and with fine of Rs.1,000/- in default to undergo six months simple imprisonment u/s 302 IPC.

For Appellant : Mr. A. Abdul Lathif

Mr. Navin Kumar Murthi
Legal Panel Counsel

For Respondent : Ms.M. Prabhavathi,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Originally, the appellant/accused was convicted for the offences u/s.498(A), 302 IPC and was sentenced as follows:-

Conviction under section	Sentence Awarded
498(A) IPC	sentenced to undergo rigorous imprisonment for ONE YEAR and a fine of Rs.1,000/-, with a default sentence of one month simple imprisonment.
302 IPC	sentenced to undergo imprisonment for LIFE and a fine of Rs.10,000/-, with a default sentence of six months simple imprisonment.

in S.C.No.400 of 2013 on the file of the learned III Additional District and Sessions Judge, Kallakurichi, under judgment dated 05.04.2016. The Trial Court ordered all the sentences to run concurrently and the detention period already undergone by the appellant was ordered to be set off u/s 428 Cr.P.C. Aggrieved over the above conviction and sentences the present appeal came to be filed by the appellant.

2. The brief facts of the prosecution in nutshell is as follows:

2.(a) The deceased is the wife of the accused. They married against the wishes of P.W.4 and P.W.5 parents of the deceased. The deceased and accused were residing separately. Out of wedlock a female child (aged about 6 months at the time of occurrence) was born. There were frequent quarrels between the accused and the deceased. The accused used to drive the deceased out of matrimonial home. However, P.W.4 and family members used to pacify them and send them. on 19.10.11 at about 7.30 p.m., P.W.4 received a phone call from the accused stating that the deceased committed self immolation and she was admitted in the hospital. When P.W.4 rushed to the Salem Government Hospital and enquired the deceased, she has informed that when the deceased questioned her in-laws as to why they are calling repeatedly the accused to their house, A3 beat her with broomstick. Thereafter, the accused beat the deceased and poured kerosene on her and set her ablaze. P.Ws.4 and 5 examined by the Revenue Divisional Officer. P.W.12 Sub-Inspector of Police on 11.10.2011, on receipt of the intimation from the Government Hospital, Salem, went to the hospital and

examined the deceased who was taking treatment as in-patient and recorded her statement under Ex.P.9 and registered the crime on 12.10.2011 at 6.00 a.m. under Sections 341, 353, 498(A) and 307 I.P.C. and registered F.I.R. under Ex.P.10. P.W.13 Inspector of Police took up the case for investigation and went to the place of occurrence and prepared observation mahazar Ex.P.11 and rough sketch Ex.P.12 in the presence of the witnesses, recorded their statements, arrested the accused in the presence of Village Administrative Officer and recorded his confession. Pursuant to the admissible portion of the confession Ex.P.13, he seized the plastic can with half a litre kerosene under Ex.P.4 Mahazar and sent the accused A1 to A3 to the Judicial Magistrate Court for remand.

2.(b) On 13.10.2011, P.W.13 received the death intimation from the hospital and he has altered the crime to 302 I.P.C. under Ex.P.15 Alteration Report and gave a requisition to the Revenue Divisional Officer to conduct Inquest. P.W.8 R.D.O. incharge, on 14.10.2011 conducted inquest on the body of the deceased and examined witnesses and recorded their statements and prepared Inquest Report Ex.P.16. In the meanwhile on 11.10.2011 P.W.10 Judicial Magistrate after intimation from the hospital authorities went to the hospital at 8.55p.m., in the presence of medical officer recorded the Dying Declaration and obtained her toe print. The Dying Declaration is Ex.P.7. P.W.11 Medical Officer attached to the Salem Government Hospital at the relevant point of time conducted autopsy over the dead body of the deceased and found the following Antemortem injuries:

"DERMO- EPIDERMAL BURNS OVER FACE, FRONT AND SIDES AND BACK OF NECK FRONT AND BACK OF CHEST AND UPPER PART OF ABDOMEN, BOTH UPPER LIMBS INCLUDING HANDS, UPPER PART OF INNER ASPECTY OF RT SIDE LEG. REST OF THE PART INTACT. BURNT AREAS SHOWS HYPREAMIA WITH PEELING OF CUTICLES. SCALP HAIR, EYE BROW AND AXILLARY HAIR."

He issued Ex.P.8 Post Mortem Certificate with opinion that the deceased would have been died due to burn injuries.

2.(c) P.W.14 Revenue Divisional Officer has perused the report stating that as the period of two months has already been over, no purpose in visiting the place of occurrence. P.W.13 in continuation of his investigation examined the medical officer and other witnesses and gave necessary requisition to the Court to record 164 Cr.P.C. statement of the accused and after completion of the investigation filed final report under Sections 323, 353, 498(A) and 302 I.P.C.

3. The accused was put on trial. In order to establish the

case, the prosecution examined P.Ws.1 to 14 and marked Exs.P.1 to 17 and M.O.1. After the examination of prosecution witnesses the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances for which he denied the complicity. On the side of the accused, the medical officer attached to the Kallakurichi Government Hospital was examined as D.W.1. He deposed that on 09.10.2011 at about 8.20 a.m., the deceased was brought to the hospital and she was conscious and she has stated that she accidentally got fire while cooking. D.W.1 has noted 40% of burn injuries and referred the deceased to the Government Hospital, Salem, in respect of which he issued Ex.D.1 Accident Register. Originally the appellant/A1, his aunt (A2) and her daughter-in-law (A3) were charged for various offences. However, the trial Court on appreciation of evidence, found guilty of A1/appellant alone. Aggrieved against the same, the present appeal came to be filed by the appellant.

4 Learned Legal Aid Counsel appointed for Appellant to defend his case vehemently contended that the entire case rests on the dying declaration said to have been recorded by the Judicial Magistrate. It is the contention of the learned counsel that the dying declaration is tutored version of Ex.P.9. Another dying declaration said to have been recorded by the Sub-Inspector of Police is a cooked up document, which was recorded subsequent to the Dying Declaration Ex.P.7. Ex.P.7 Dying Declaration shows that as both hands are injured thumb impression of both hands could not be obtained by the Magistrate, only toe impression was obtained. Whereas Ex.P.9 statement of the deceased clearly shows that as if the deceased affixed thumb impression, though it was recorded subsequent to the Dying Declaration on the same day. The above fact clearly shows that Ex.P.9 is concocted and created only for the purpose of implicating A1 in the offence.

5. The neighbours have not even whispered anything about the alleged ill-treatment by the parents of the appellant and the appellant. They have not supported the prosecution version in any manner. P.Ws.4 and 5, parents of the deceased in their evidence have stated that while the deceased was in the hospital she gave the alleged oral dying declaration. Such oral dying declaration is also highly improbable and unbelievable. P.Ws.4 and 5 have strong motive as against the appellant to implicate him as the appellant has married the deceased against the wishes of P.Ws.4 and 5. Therefore, the belated version of P.Ws.4 and 5 is not at all believable. Further, their statement before the Revenue Divisional Officer does not show there was any dowry harassment. It is the further contention of the learned counsel for the appellant that the prosecution has suppressed a vital and the first document in this case. The doctor who treated the deceased and gave a first aid has not even cited as witness on

the side of the prosecution. Only on the defence side he was examined as D.W.1 and Ex.D.1 was filed. Ex.D1 and the evidence of D.W.1 demolishes the case of the prosecution about the homicidal death. D.W.1's evidence clearly shows that the deceased while admitting in the hospital was conscious and she gave a statement to the effect that she accidentally got burn injuries while cooking in kerosene stove. Therefore, the Dying Declaration projected by the prosecution is nothing but a tutored version and the Dying Declaration recorded by the Judicial Magistrate only on 11.10.2011 two days after the occurrence, in the mean time P.W.4 and P.W.5, parents of the deceased came to the hospital and there is a possibility of tutoring the deceased to implicate the appellant cannot be ruled out. Hence, the learned legal aid counsel appearing for the appellant submitted that Ex.P.7 Dying Declaration cannot be given much importance as the same is suffered from serious infirmities and prayed for acquittal.

6. The learned Additional Public Prosecutor submitted that the deceased has given Dying Declaration before the Judicial Magistrate besides she has also given statement before the police. On the basis of which, F.I.R. has been registered. P.W.4 and P.W.5 also stated that the deceased has given oral dying declaration. Learned Trial Court has taken into consideration of all these facts with evidences of the witnesses, correctly came to the conclusion and convicted the appellant. Hence, prayed to confirm the conviction and sentences of the trial court and dismiss the appeal.

7. We have perused the entire materials and evidence on record.

8. In the light of the above submissions, we have to analyse whether the prosecution was able to bring home the guilt of the appellant/accused beyond all reasonable doubt.

9. Originally, charges were framed against the Appellant/A1 and his aunt/A2 and her daughter in law/A3 as follows:

A1 : 498(A) and 302 I.P.C.

A2 : 498(A) I.P.C.

A3 : 498(A), 323 and 355 I.P.C.

and the trial court has acquitted A2 and A3 from the charges and convicted the appellant/A1 alone, under Sections 498(A) and 302 I.P.C.

10. Admittedly the deceased and appellant were married against the wishes of deceased parents. They were residing in a separate residence in Ammapettai village. Though P.Ws.4 and 5 in their evidence stated that on receipt of information about burn injuries sustained by their daughter, they rushed to Salem

Government Hospital, it is their evidence that prior to the incident, there were frequent quarrels between the husband and wife. But we are not in a position to rely upon their evidence as to frequent quarrels. Admittedly, the deceased and appellant married against the wishes of parents and they were residing separately. If really there were frequent quarrel between them, definitely, the neighbours who were examined as P.Ws.1 to 3 would have been given evidence of such fact. But, the neighbours P.Ws.1 to 3 have not whispered any thing about any quarrels between the husband and wife in their evidence. Further, it is the evidence of P.Ws.4 and 5, when they visited their daughter in the hospital on 9.10.2011, on enquiry, the deceased gave oral dying declaration implicating the accused. Their evidence is highly unreliable for the simple reason that if really the deceased has given any such statement to her parents on 9.10.2011, their conduct would have been otherwise. They would have given a first information report with the police. But they did not made any complaint.

11. It is further to be noted that P.Ws.4 and 5 parents, reached Salem Government Hospital at 7.00 p.m. on 9.10.2011. The evidence of P.W.5 goes to the effect that when they reached the hospital the deceased was not in a position to speak. Only the next day she gave oral dying declaration i.e., on 10.10.2011. This shows the total inconsistent evidence of P.W.5. P.W.4 in his evidence has stated that immediately after reaching the hospital, the deceased gave a dying declaration. Therefore, the inconsistent evidence of P.Ws.4 and 5 as to oral dying declaration is highly improbable and create serious doubts about their version. Admittedly, the deceased and appellant married against the wishes of P.Ws.4 and 5. Therefore, the possibility of implicating the appellant by P.Ws.4 and 5 cannot be ruled out. Hence, it is highly unreliable that the oral dying declaration was said to have been given by the deceased.

12. No doubt, as per the evidence of the Medical Officer P.W.8 the deceased appear to have died due to burn injuries. But the fact remains that when the neighbours who were examined as P.W.1 to P.W.3 have not supported the prosecution. They have not stated anything about the occurrence. The deceased was originally admitted in the Kallakurichi Government Hospital. From there she was referred to Salem Government Hospital. As per the evidence of P.W.9 on 9.10.2011, at the time of admission she was conscious and oriented. Therefore, the evidence of P.W.5 that on the date when she went to the hospital she was not able to speak and she was unconscious is also highly doubtful. Hence, P.Ws.4 and 5 evidence with regard to the physical and mental state of the deceased cannot be believable.

13. Though P.W.10 Judicial Magistrate has examined to prove the Dying Declaration Ex.P.7 given by the deceased, it was

recorded only on 11.10.2011 at about 8.55 p.m. after the parents and relatives of the deceased were very much present in the hospital. Learned Judicial Magistrate recorded the Dying Declaration and obtained left toe impression as the deceased sustained burn injuries in both the hands. Ex.P.7 recorded by the Judicial Magistrate when carefully scanned, the deceased has implicated the appellant, pouring kerosene on her and lit fire pursuant to the quarrel between them. It is to be noted that the dying declaration which inspires confidence and free from any influence or tutoring itself is sufficient to base a conviction. But before acting upon the Dying Declaration of the deceased, the Court has to assess whether the Dying Declaration is free from any influence or tutoring. Admittedly the Dying Declaration was recorded only on 11.10.2011, after two days of occurrence. Prior to that P.Ws.4, 5 and other relatives were very much present in the hospital. It is further to be noted that the prosecution relied on the statement said to have been recorded by the Sub-Inspector of Police, on the basis of which F.I.R. Filed on 11.10.2011. It is to be noted that Ex.P.9 statement was recorded by the Sub-Inspector of police at 22.00 hours. One hour before i.e., at 20.55 hours when the Dying Declaration was recorded by the Judicial Magistrate, the Judicial Magistrate herself found that the deceased was not in a position to affix thumb impression, she obtained only toe imprint. Whereas the Sub-Inspector of police recorded Ex.P.9 said to be the statement of the deceased, stated that as if she put left thumb impression. This fact itself clearly shows that Ex.P.9 and F.I.R. have been concocted and created only to implicate the appellant in the offence.

14. It is further to be noted that the prosecution has suppressed the vital document Ex.D.1. In fact D.W.1 who has admitted the deceased at the first instance immediately after the occurrence not even cited as witness in the prosecution side. He was examined as a defence witness through him Ex.D.1 Accident Register came to be filed. D.W.1 in his evidence has stated that while he was in Kallakurichi Government Hospital, the deceased was brought to the hospital. She was conscious and stated that she got burn injuries accidentally at 7.30 a.m. while cooking in her house. D.W.1 in his cross examination also asserted that he examined the deceased and the Accident Register Ex.D.1 was issued by him and the deceased was conscious at the relevant time. The above document has been purposely suppressed by the prosecution for the reason best known to them. When the deceased has given a different version about the burn injuries at the earlier point of time, the subsequent statement, particularly when her parents were very much present assumes significance and cannot be given much importance. The Sub-Inspector of Police who recorded Ex.P.9 in his evidence also stated that while he recording the statement, both P.Ws.4 and 5 were very much present. All these facts clearly show that

Ex.P.7 and Ex.P.9 are nothing but tutored version. If really the deceased has given such a dying declaration to P.W.5 on 9.10.2011, her immediate conduct would have been to lodge a complaint. But they remain silent. All these facts show that the entire prosecution is unbelievable.

15. Unfortunately, the deceased succumbed burn injuries. When the Dying Declaration appears to be tutored version of the parents of the deceased, as the appellant married the deceased against their wish, it is unsafe to rely upon such Dying Declaration. Hence, we are of the view that the version of the prosecution is highly doubtful and the appellant is certainly eligible for getting the benefit of doubt for the offence under Section 302 I.P.C. Further, there is no evidence to attract the offence under Section 498(A) I.P.C. against the appellant and hence he is also liable to be acquitted from the charge under Section 498(A) I.P.C. Since, prosecution has failed to bring home the guilt of the accused beyond all reasonable doubt, the appeal is liable to be allowed. The point is answered accordingly.

16. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant/accused by the trial Court vide impugned Judgment in S.C.No.400 of 2013 dated 05.04.2016 are set aside and he is acquitted of all charges levelled against him. The fine amount, if any, paid by the appellant shall be refunded to him.

17. It is reported that the appellant/accused is on interim bail. The bail bond executed by him shall stand cancelled and the disposal of the M.Os. are as per the direction of the trial Court judgment.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
Kachirayapalayam Police Station
Villupuram District.

2. III additional Sessions Judge,
Villupuram @ Kallakurichi,
Villupuram District.

3. The Public Prosecutor,
High Court, Madras.

4.The Superintendent Central Prison
Cuddalore

5.The District Collector Villupuram

6.The Director general of police
Mylapore Chennai

7.The Secretary Legal Service Authority Chennai

+1 cc to Mr.A.Abdul Lathif Advocate sr 19632

Crl.A.No.172 of 2017

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