

BAIL SLIP

The Appellant/Accused namely D.Yuvaraj, S/o.Duraiswamy was directed to be released on bail by order of this court dated 29.10.2009 and made in M.P.No.1 of 2009 in Cr1.A.No.637 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Criminal Appeal No.637 of 2009

D.Yuvaraj

... Appellant/Accused

Vs

State by
The Inspector of Police
G-4, Redhills Police Station
Chennai
Cr.No. 231 of 2004

... Respondent/Complainant

Prayer:

Criminal Appeal filed under Section 374(2) of Criminal Procedure code, seeking to set aside the Judgment of conviction and sentence of the appellant in SC No. 370 of 2005 dated 10.09.2009 on the file of the Assistant Sessions Judge, (Subordinate Judge) Ponneri.

For Appellant : Mr.M.L.Joseph
For M/s.Chennai Law Chambers

For Respondent : Mr.R.Ravichandran
Government Advocate (Criminal Side)

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J U D G M E N T

The appellant has filed this appeal seeking to set aside the Judgment dated 10.09.2009 made in S.C.No.370 of 2005 by the learned Assistant Sessions Judge, Ponneri.

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

The accused and the deceased are the husband and wife. PW 1 and PW 2 are the parents of the deceased, PW 3 is the maternal uncle of the deceased, PW 5 is the sister husband of the accused and PW 6 is the younger brother of the accused. The marriage between the deceased and the appellant was solemnized on 03.06.2001, for which Rs.1,50,000/- has been spent by the parents of the deceased. Further, at the time of marriage, the parents of the deceased gave 17 sovereign gold and house hold articles as Sridhana. After the marriage, they started their matrimonial life, along with the parents of the appellant.

3. During that time, frequent quarrel had happened between the appellant and the deceased. Even after 10.00pm, the appellant used to call the parents of the deceased and insisted them to take her to their home. In the presence of elders, both the appellant and the deceased were made compromise and sent back to their matrimonial home. Thereafter, the appellant and the deceased were blessed with one female child. After gave birth to the 1st child, when the deceased was 3 months pregnant, both the appellant and the deceased have come to a marriage function of PW 1's relative and after completion of function, the appellant left the deceased in the function itself and went away. On 24.05.2004, after made compromise before the elders, the appellant took the deceased to his sister's house, instead of their matrimonial home. On the same day, at about 9.30pm, PW 1 received the information as if the deceased died due to the burn injuries.

4. Immediately, PW 1 and their family members rushed to the Hospital and found her body. On seeing the body, PW 1 preferred a complaint before Sengundram Police Station and on receipt of the complaint given by PW1, PW 10/Sub-Inspector of Police registered a case in Cr.No. 231 of 2004 under Section 174 Cr.P.c and 306 IPC under Ex.P.5. PW 14/the then Deputy Superintendent of Police, after completing the further investigation in this case, altered the Sections into Sections 306 and 498 A of IPC and filed a Final Report.

5. Based on the above materials, the trial Court framed the charges as detailed above and the accused denied the same as false. In order to prove the case of the prosecution, 14 witnesses were examined as P.W.1 to P.W.14 and 9 documents were marked as exhibits Ex.P.1 to Ex.P.9. Three material objects were marked as M.O.1 to M.O.3. On the side of the accused, neither any witness was examined nor any document was marked as exhibit.

6. Out of the above witnesses, PW 1 and PW 2 are the parents of the deceased, PW 3 is the maternal uncle of the

deceased, PW 5 is the sister's husband of the accused and PW 6 is the younger brother of the accused. PW 4, PW 7 are the independent witnesses in this case. All the other witnesses are the witnesses, who performed their official duty and assisted the prosecution case.

7. The learned trial Judge, questioned the accused with reference to the incriminating evidence adduced by the prosecution, under section 313 Cr.P.C. for which, the accused denied the same as false. Hence, trial was proceeded as against the accused.

8. After trial, the trial Court convicted the accused for the offence under Sections 498 A and 306 IPC and sentenced him to undergo 2½ years rigorous imprisonment and to pay a fine of Rs.2,500/- in default to undergo 3 months rigorous imprisonment for the offence under Section 498A of IPC and to undergo 9 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months rigorous imprisonment for the offence under Section 306 IPC and the Trial Court further ordered the sentences to run concurrently. Challenging the above said conviction and sentence, the accused/appellant has come forward before this Court with this appeal.

9. The learned counsel appearing for the appellant would contend that there is no material whatsoever available on record to prove the charges under Section 306 IPC against the accused. Further, he contended that the evidence of PW 1 and PW 2 who are the parents of the deceased are totally contradictory to the evidence of PW 4, PW 5 and PW 6. The learned Counsel further submitted that due to stove burst, the deceased sustained severe burn injuries, resultantly, the deceased died and the deceased also gave statement to that effect before the Doctor, who has been examined as PW 12. The said Doctor has also specifically stated that due to the burn injuries, the deceased would have died. However, without considering the evidence of PW 12/Doctor, who treated the deceased at first instance, the learned trial Judge convicted the appellant as stated above. Further, Ex.P.6/Accident Register clearly indicates that due to the stove burst, the deceased would have died.

10. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would contend that PW 1, PW 2, PW 3 and PW 5 have clearly spoken about the quarrel between the accused and the deceased, which led the deceased to commit suicide. Therefore, the Judgment of the Trial Court need not be interfered with.

11. I have heard Mr.M.L.Joseph, the learned Counsel appearing for the appellant and Mr.R.Ravichandran, the learned

Government Advocate (Criminal Side) appearing for the respondent and also perused the materials available on record carefully.

12. In the light of the above submissions, now, it has to be analyzed, whether the prosecution has proved the guilt on the accused beyond all reasonable doubt?

13. The evidence of PW 1, who is the father of the deceased clearly indicates that after the marriage, the deceased was residing along with the parents of the accused. During that time, the accused/appellant driven the deceased out of the matrimonial house demanding money. However, in his cross examination, he clearly indicates that several times, PW 1 and PW 2 pacified their deceased daughter to go to her matrimonial home. However, on perusal of entire evidence, there is no whisper for the cruelty made by the accused against the deceased. PW 5 evidenced to the effect that on 24.05.2004, at about 8.00 pm, the accused and the deceased had come to his house along with their 1½ years girl child. Since they had come to his house unexpectedly and as there was no food available in his house, he went to purchase some idlies for the child and started to feed the child, by standing opposite to his house. At that time, the wife of PW 5 brought water for the child and the accused also came along with his wife. Suddenly, a burning body (deceased) came out from his house and fell down in the street. Immediately, the accused roped her with bed sheet and taken her to the Hospital. Hence, the only eye witness adduced by the prosecution in this case is PW 5.

14. On perusal of the evidence of PW 1 to PW 3 and PW 6, there is no cruelty or quarrel alleged against the appellant. On perusal of the evidence of PW 4, it is revealed that the appellant has no illegal contact or bad habits. On perusal of the entire evidence of prosecution, there is no incitement or abetment to force the deceased to commit suicide. The abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, charge under Section 306 IPC cannot be inferred. There should be a live link or proximity link between the act of the accused and the act of the deceased committing suicide. If the live link is missing, it cannot be said that the accused have incited or induced the deceased to take the extreme step of committing suicide.

15. In the present case, perusal of the evidence of PW 1 to PW 6, it is known that there is no allegation of harassment or cruelty as against the accused. There is also no allegation against the appellant for abetment to force the deceased to commit suicide. In view of the above, the prosecution has

miserably failed to prove the case against the appellant beyond all reasonable doubts and the Judgment of the Trial Court needs interference and the same is liable to be set aside.

16. In the result, the Criminal Appeal is allowed. The conviction and sentence as against the appellant / accused, in the Judgment dated 10.09.2009 in SC No. 370 of 2005, passed by the learned Assistant Sessions Judge, Ponneri are set aside. The appellant / accused is acquitted from the charge under Sections 498 A and 306 of IPC. Fine amount, if any, paid by the appellant/accused is ordered to be refunded to him. The bail bond, if any, executed by him and the sureties shall stand terminated/discharged.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vrn/pri

To

1. The Judicial Magistrate No.2
Ponneri.
2. -do Thro Chief Judicial Magistrate,
Tiruvallur.
3. The Assistant Sessions Judge,
(Subordinate Judge), Ponneri.
4. The Superintendent,
Central Prison, Puzhal, Chennai.
5. The Inspector of Police
G-4, Redhills Police Station
Chennai
6. The District Collector,
Tiruvallur.
7. The Director General of Police,
Chennai.
8. The Public Prosecutor,
High Court, Madras-104.

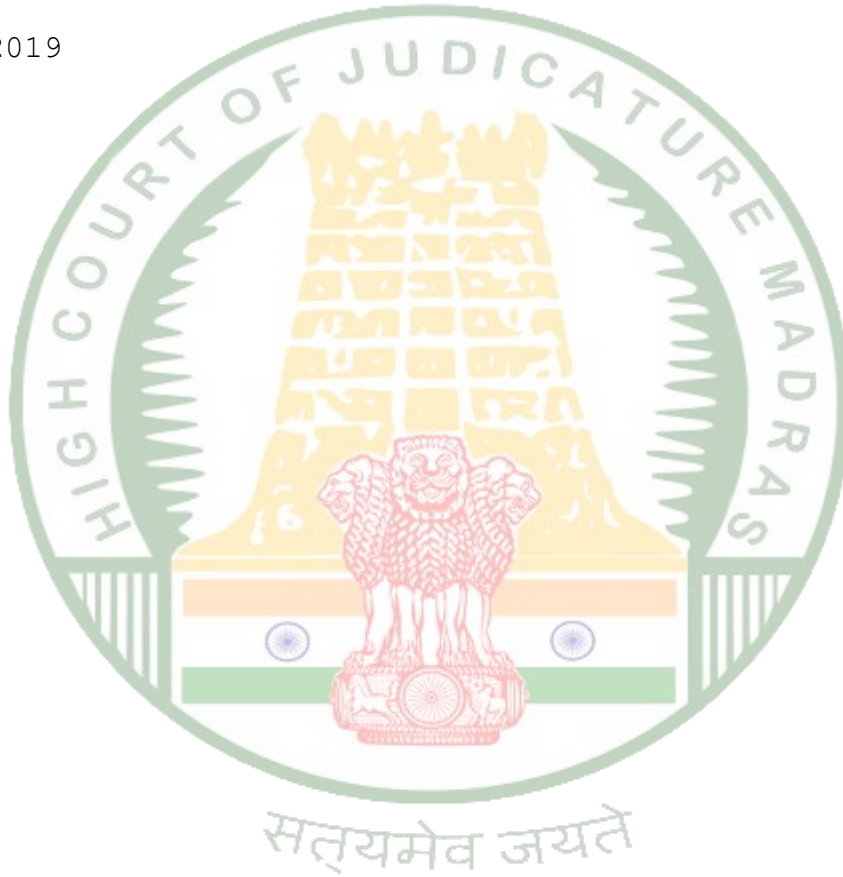
Copy To

The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to M/s.Chennai Law Associates, in sr.no.89633

Crl.A.No.637 of 2009

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CS/31/01/2019



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