

Bail Slip

The Petitioner/accused, Seeman @Arokiaraj S/o Chinnappan Accused in S.c.No.82/2009 dated 20.04.2010 on the file of the I Additional Assistant sessions Judge, Villupuram was directed to be released on bail as per order dated 28.05.2010 made in MP.NO.1/10 IN CRL A.NO.325/2010 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 28.02.2017	Date of pronouncing the Judgment : 27.09.2018
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CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Appeal No.325 of 2010

Seeman @ Arokiyaraj ... Appellant / Accused No.1

Vs.

State rep. by
The Inspector of Police,
Kanjapur Kodar Police Station
Villupuram District.
Crime No.105 of 2008

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 Cr.P.C., against the conviction and sentence passed in S.C.No.82 of 2009 dated 20.04.2009 by the I Additional Assistant Sessions Judge, Villupuram.

For Appellant :: M/s. S.Saravana Kumar and P.Lakshmi Devi

For Respondent :: Mr.E.Raja, Additional Public Prosecutor

JUDGMENT

The above Criminal Appeal is filed u/s 374 of Cr.P.C. 1973 praying to set aside the Judgment of conviction and sentences passed against the appellant dated 20-04-2010 in Sessions Case No.82 of 2010 by the learned I st Additional Assistant Sessions Judge, Vilupuram and acquit the appellant/accused.

1.The case of the prosecution:

1.1 The deceased Sathrutha Mary and the appellant/1st accused and accused 2 to 4 were the residents of Thuravithangal village. The 1st accused is the deceased's aunt son. The 1st accused and deceased loved each other, but subsequently, the deceased married one Peter in the year 2005 and the 1st accused betrayed. Thereafter PW.1 Renail, the younger sister of deceased Sathrutha Mary was working at Chennai as house maid and at that time, the first accused informed PW.1 that he loved her and wishes to marry her. Accordingly, the 1st accused took P.W.1 to Pondicherry, had physical relation resulting in pregnancy. On 19-09-2008, when PW-1 came to Thuravithangal village, the deceased asked PW-1 as to why she accompanied first accused who cheated her and went to Pondicherry along with the first accused for which PW-1 replied that she is pregnant due to relationship with the first accused and so she could not do anything. Thereafter the deceased requested the first accused to marry PW-1 for which the first accused informed the deceased that he would marry PW-1 if Rs.50,000/- was paid as dowry for which the deceased gave Rs.30,000/- Thereafter also the first accused refused to marry PW-1. Hence, the deceased requested her relatives to force the first accused to marry PW-1 and also informed the first accused's family, due to which the first accused and his family developed enmity with the deceased. On 27-10-2008 on the day of Diwali at about 4.00 pm while the deceased Sathirutha Marry was in her house, the accused 1 to 4 came there, scolded the deceased and asked her to come out and abused him in filthy language. The accused also stated that the amount given by the deceased was compensated by the first accused shared the bed and her sister also had the bad character and 3rd accused also unleashed ugly work by saying that A3 would also share the bed with the deceased like his son and asked her to come immediately to the street to share bed with A3. Anguish and upset by the said act of the accused, the deceased went into her house, poured kerosene and set-fire to herself. The mother of the deceased extinguished the fire and took the deceased to Government Hospital, Villupuram, then Pondicherry and then KMC Hospital, Chennai, where she passed away.

1.2. On 29-10-2008, PW-11 who was working as sub-Inspector of Police, Kedar Police station received intimation from KMC Hospital and he immediately at 8.30pm went to the said hospital and he recorded the statement Ex.P1 of the deceased Sathura Marry while she was taking treatment as inpatient and returned to Kedar police station on 30-10-2008 at 12.-00 a.m and registered a case in Cr.No.105 of 2009 U/s 294(b), 354,506(ii), 509, 306 r/w 116 IPC and Sec 4 of Tamil Nadu Prohibition of

Harassment of Women Act under Ex.P.4. Thereafter, PW-12 the Inspector of Police, Kanjanoor took up the case for investigation and went to the scene of occurrence at 13-30 hours and prepared observation mahazar and rough sketch Ex.P2 and Ex.P5 respectively. He arrested all the accused at 16.30 hours near the Kakkanoor Bus stop and brought them to police station, then sent them to Judicial custody. P.W.12 went to KMC Hospital, Chennai, and enquired the deceased Sathura Marry while she was taking treatment as inpatient and recorded her statement. Thereafter he received intimation on 6-11-2008 that Sathura Marry died and he altered the offence into one u/s.306 IPC and the alteration report Ex.P.6 was submitted by him. He conducted inquest on the body of the deceased between 8 to 10 hours and the inquest report prepared by him is Ex.P7. Thereafter he examined witnesses and completed the investigation and laid the final report against the accused U/s 294(b), 354, 506(ii), 509, 355 and 306 IPC and Sec 4 of Tamil Nadu Prohibition of Harassment of Women Act.

1.3. The trial court framed charges U/s 294(b), 354, 509, 506(ii), 306, 355 IPC and Sec 4 of Tamil Nadu Prohibition of Harassment of Women Act against the 1st, 3rd and 4th accused and Under Section 294, 509, 506(ii), 354, 355 and 306 IPC against the 2nd accused. All the accused denied all the charges framed against them.

2. On the side of the prosecution PW-1 to 12 were examined and Ex.P1 to P7 were marked. No material object marked. The defence side does not produce any evidence. The trial court after considering the materials on record found the first accused guilty Under Section 294(b), 354, 355, 506(ii), 509, 306 IPC and Sec 4(B) Tamil Nadu Prohibition of Harassment of Women Act and A2 to A4 were found guilty U/s 294(b), 355 and 509 IPC and convicted. The first accused was convicted and sentenced to undergo 3 month RI and to pay a fine of Rs.1000/- i/d to undergo 1 months RI U/s 294(b) IPC, 2 years RI and to pay a fine of Rs.2000/- i/d to undergo 6 months RI for the offence U/s 354 IPC, 2 years RI and to pay a fine of Rs.2000/- i/d to undergo 6 months RI for the offence U/s 355 IPC, 5 years RI and to pay a fine of Rs.5000/- i/d to undergo 3 years RI for the offence U/s 506(ii) IPC, 1 years RI and to pay a fine of Rs.1000/- i/d to undergo 3 months RI for the offence U/s 509 IPC, 10 years RI and to pay a fine of Rs.10,000/- i/d to undergo 3 years RI for the offence U/s 306 IPC, 10 years RI and to pay a fine of Rs.50,000/- i/d to undergo 3 years RI for the offence U/s 4(B) Tamil Nadu Prohibition of Harassment of Women Act. The above sentences are to run consecutively. Set off is allowed U/s 428 of Cr.P.C.

A2 to A4 were convicted and sentenced

i). to pay fine of Rs.1000/- i/d one month RI for offence

U/s 294(b) IPC,

ii). And to pay fine of Rs.2000/- i/d 6 months RI for offence U/s 355 of IPC

And to pay fine of Rs.1000/- i/d 3 months RI for offence U/s 509 of IPC,

And A2 found not guilty U/s 506(ii) and A3 and A4 found not guilty U/s 506(ii) and r/w 4(B) Tamil Nadu Prohibition of Harassment of Women Act and acquitted them in the above charges by the trial court and the court also awarded a sum of Rs.41,500/- out of the total fine amount of Rs.83,000/- as compensation to the father of the deceased.

On perusal of records, it is seen that actually the charges were framed by the trial court as follows:-

Firstly- U/s 294(b) IPC against A1 to A4

Secondly- U/s 354 IPC against A1 to A4

Thirdly- U/s 509 IPC against A1 to A4

Fourthly- U/s 506(ii) IPC against A1 to A4

Fifthly- U/s 306 IPC against A1 to A4

Sixthly- U/s 352 IPC against A1 to A4

Seventhly -U/s 4 Tamil Nadu Prohibition of Harassment of Women Act.

However, the trial court convicted A1 to A4 U/s 355 of IPC for which no charge is framed.

Further, there is no finding in respect of charge framed against A1 to A4 for the offence u/s 352 of IPC.

There is no finding in respect of charge framed against A2 to A4 for the offence u/s 306 of IPC.

There is no finding in respect of charge framed against A2 to A4 for the offence u/s 354 of IPC.

Likewise, though charge was framed against A3 and A4 for the offence u/s 4 Tamil Nadu Prohibition of Harassment of Women Act (4B and r/w not mentioned in the charge framed). The trial court found A3 and A4 not guilty U/s r/w 4(B) of Tamil Nadu Prohibition of Harassment of Women Act.

Similarly, though charge was framed against A1 for the offence u/s 4 Tamil Nadu Prohibition of Harassment of Women Act (4B and r/w not mentioned in the charge framed). The trial court found A1 guilty U/s r/w 4(B) of Tamil Nadu Prohibition of Harassment of Women Act. Nothing is stated in the judgment of the trial court that which provision is to be r/w provision of 4(B) of Tamil Nadu Prohibition of Harassment Act.

4. Thus, the finding of the trial court is not in accordance with the charges framed and committed material error in arriving at conclusion as stated above.

5. Thus, aggrieved over the conviction and sentences imposed against appellant/A1, he has preferred this appeal.

6. The learned counsel for the appellant submit that though the PW-11 Sub-Inspector of Police received information on 27-10-2008 from the Villupuram Government Hospital, the FIR was registered only on 30-10-2008 that to only after receiving another information from Kilpauk Hospital, Chennai and the prosecution has failed to explain the delay which causes series doubt about the genuineness of prosecution case. It is further contended that the doctors who examined the victim at Villupuram Hospital and Pondicherry Hospital has not been cited as witness and the material evidence is suppressed by the prosecution. Ex.P1 the statement of the victim is said to have been recorded by PW-11 on 30.10.2008, but the hospital records shows that the statement was recorded on 29-10-2008 at 8.30 pm and so the Ex.P.1 is very doubtful and the alleged thump impressions of the victim has not been proved by the prosecution. The independent witnesses by the Prosecution are close relatives of the victim and so due care and caution should have been taken while scrutinizing the evidence of the above witnesses but the trial court has not followed the same. Available evidence on record would not prove the ingredients of the offences. Further no material objects has been recovered from the place of occurrence and the prosecution also failed to prove that the smell of kerosene was found on the body of the deceased, when the victim was examined by doctor immediately after the occurrence. It is contended that Ex.P1 is not the first complaint stated and the earliest complaint was suppressed and the trial court did not consider the materials on record properly and the conviction is based only on presumption, surmises and conjecture and the same is bad in law and based on erroneous hypothesis and assumptions not warranted by the materials on record. Hence it is contended that the appeal may be allowed and conviction and sentence passed by the trial court be set-aside and appellant may be acquitted.

7. Per contra the learned Additional public prosecutor argued that the evidence of PWs 1, 2, 4 and 7 clearly speaks about the occurrence as well as earlier incidents and so their evidence cannot be eschewed on the ground of close relationship of the witnesses with the deceased and their evidence is to be scrutinized with care and caution and the trial court has elaborately discussed the same and arrived at the correct conclusion as their evidence is clear, cogent and believable. The fact remains that the deceased committed suicide by pouring kerosene and setting fire to herself and the cause of the commission of suicide is clearly deposed by the above said eye witnesses and the investigation also is properly conducted and in these circumstances, the learned Prosecutor contended that there is no need to interfere with the trial court judgment and the appeal may be dismissed confirming the judgment of the trial court.

8. Now Points for consideration in this appeal is
1. Whether the charges framed against the appellant /A1 is proved beyond reasonable doubt

2. Whether the conviction and sentences imposed against Appellant/A1 is legally sustainable?

The deceased Sathura Marry is the aunt's daughter of A1 while A2 and A3 are the parents of A1 and A4 is the brother in law of A1. PW-1 Renil, is the sister of the deceased. PW-2 Vanathaiyan is the deceased's husband's brother. PW-4 Arokiya Marry, is the mother of the deceased, PW-5 Josepin Marry is the wife of PW-2, The deceased is the sister of PW-7's wife. On 27-10-2008 at about 4.00 p.m, the deceased Sathuratha Marry set fire to herself and she was taken to Villupuram Government Hospital, then Pondy Hospital and then to Kilpauk Medical College Hospital, Chennai where she died on 6-11-2008 due to burn injuries sustained by her. Autopsy was conducted on the body of the deceased by P.W-10 Doctor Kuppusamy on 6-11-2008 at Kilpauk Medical College Hospital, Chennai and found 70% burn injuries with septicemia and he gave opinion that the deceased would have died of complication caused by the burn injuries suffered by her. The post mortem certificate was marked as Ex.P3. The above said facts have not been disputed.

9. The cause for commission of suicide alleged by the prosecution is that the deceased and the first accused fell in love with each other, but later A1 refused to marry the deceased and so the deceased married another person namely Peter. Thereafter when PW-1 who is the sister of the deceased was working in Chennai as house maid, A1 loved PW-1 and expressed his willingness to marry PW-1 and on his phone call PW-1 went to Pondy where they shared the bed and consequent to that, PW-1 got conceived. On 19-09-2008 when PW-1 came to the native place of Thuravithangal, the deceased asked PW-1 why she accompanied A1 to Pondicherry as the deceased was cheated by A1 for which the PW-1 answered that she is conceived and she could not think otherwise and thereafter PW-1 accompanied A1 to Pondy and when they were in the room, A2 came there and scolded PW-1 and kicked on the stomach of PW-1 and thereby PW-1 got aborted and thereafter when PW-1 and others came to Thuraivithangal village, PW-1 asked A1 as he already cheated her and why he was cheating his sister for which A1 informed the deceased that he would marry PW-1 on a condition that if dowry of Rs.50,000/- was given to him. Accordingly, deceased gave Rs.30,000/- to A1. Thereafter also inspite of repeated request through Relatives, A-1 refused to marry PW-1. Whiles, on 27-10-2008, the accused A1 to A4 came to the house of the deceased and asked her to come out and shouted ugly words affecting the deceased's character. They also told the deceased that the amount given by her was only compensation for sharing bed with the deceased and her sister also having bad character. In such

circumstances, upset over the behaviour of A-1 to A-4, the deceased went in to her house, poured kerosene on herself and set-fire. Immediately, PW-4 extinguished the fire and brought the victim to Government Hospital at Villupuram, then to Hospital at Pondicherry and then to Kilpauk Medical College Hospital, Chennai. The other witnesses who deposed as PW-2, 4, 5 and 7 corroborated the evidence of PW-1.

10. PW-1, 2, 4 and 7 have not stated that the appellant/A1 touched the body of the deceased, PW-5 alone has stated that all the four accused jointly caught hold of the hands of the deceased and pulled her. Whether it could be sufficient to invoke the provision of Sec 354 of IPC. The evidence of PW-5 in this aspect is not supported by the alleged other eye witnesses and no allegation of intention to outrage the modesty of the deceased except pulling of hand by A1 along with other accused and without any mensrea. Hence, in these aspects, Section 354 IPC is not made out.

11. As far as Sec 355 of IPC is concerned nothing is available to show that A1 with other accused committed the Act with an intent to dishonor the deceased by doing an act with force and as such, Sec 355 of IPC is also not attracted.

12. As far as Sec 506(ii) of IPC is concerned, there is no evidence that A1 armed with any weapon or otherwise to cause threat of dire consequences to the deceased and so, no offence U/s 506(ii) of IPC is made out.

13. As far as Sec 306 of IPC is concerned, the evidence available is that the appellant unleashed ugly words affecting the deceased's character and also informed that the amount given by the deceased was compensated by sharing bed with her and her sister also was a bad character and because of the words uttered as stated above she committed suicide" In this regard, other eye-witnesses have spoken to whether the above said act would attract the provision U/s 306 of IPC. Mere uttering the words as stated above is not sufficient that the appellant/A1 had an intention to induce the deceased to commit suicide and mens rea is lacking. Even though the words uttered as above would be the cause for commission of suicide by the deceased, without any intention or force or any other manner, the appellant/A1 committed such an act. The provision U/s 306 IPC will not be attracted. As discussed above I find that the available evidence is not sufficient to rope the appellant/A1 for commission of offence U/s 306 IPC.

14. Now it is to be seen whether the evidence deposed by PWs 1,2,4,5 and 7 are acceptable and believable in nature. When the appellant/A1 refused to marry the deceased though they loved each other, the sister of deceased PW.1 believed the

words of appellant/A1 and shared the bed as per his wishes is not believable and acceptable one. Though PW-1 stated that she did not know the love affair of Appellant/A1 with the deceased, PW-2 deposed in his cross examination that love affair of appellant/A1 and deceased was known to PW-1.

15. Further the evidence of prosecution that the appellant/A1 demanded Rs.50,000/- and the deceased gave Rs.30,000/- as dowry is concerned it is not believable. The deceased after knowing fully well that she was cheated by the appellant/A1, gave Rs.30,000/- as advance to Appellant/A1 and thereafter she approached him to marry her sister. In these circumstances, the alleged occurrence is also doubtful.

16. Further as stated above the occurrence witnesses are closely related to each other. Even though, the appellant/A1 is also related to the deceased, here the occurrence witnesses are more related to the deceased than the appellant/A1 ie PW-1 is the sister of the deceased, PW-2 is the husband's brother of the deceased and PW-4 is the mother, PW-5 is the wife of PW-2 and PW7 is wife's sister. So evidence of eye witnesses relating to the occurrence is not believable.

17. After the occurrence, the deceased was taken to Villupuram Government Hospital, Pondy Hospital and then Kilpauk Hospital, Chennai and she died on 5-11-2008. But no dying declaration was recorded by Magistrate and no steps was said to have been taken. The above aspects are not satisfactorily explained by the prosecution. As she sustained 70% burn injuries, dying declaration ought to have been taken. In the absence of recording of dying declaration, apart from that the doctor who had seen the deceased first after the occurrence has not been examined and cited as witness and another doctor of Pondy also not examined by the prosecution and also the doctor who admitted the deceased in the Kilpauk Hospital has not been examined as witness by the prosecution. Further AR copy of Government Hospital, Villupuram, Pondy or Kilpauck Hospital has not been produced by the prosecution. In these circumstances also, there is doubt in the prosecution case that the appellant/A1 has committed the act as alleged by the prosecution.

18. Further PW-11 who recorded Ex.P1 complaint from the deceased though stated that he received intimation from the Villupuram Government Hospital, he further deposed the same is not available. So it is clear that the above intimation also suppressed by the prosecution. In these circumstances, the arguments advanced by the counsel for the appellant that the earlier complaint was suppressed and Ex.P1 is after thought created and the thump impression found on Ex.P.1 is not that of the deceased cannot be brushed aside. Thus, there is a doubt in Ex.P.1 also.

19. From the foregoing discussions, the prosecution has failed to prove the charges framed against the appellant/A1 beyond reasonable doubt and the trial court has not properly appreciated the evidence of the prosecution and the trial court also failed to consider the ingredients of the offences charged and the trial court not correctly found what are all the charges framed and what are all the charges proved and what are all the charges not proved and came to the incorrect conclusion which is not legally sustainable and so the appeal is to be allowed and conviction and sentences imposed against the appellant/A1 is to be set-aside and the appellant is to be acquitted and the points 1 and 2 are answered accordingly.

20. In the result, the appeal is allowed and the conviction and sentence imposed by the trial court are set-aside and the appellant is acquitted from all the charges framed against him. The entire fine amount paid by the appellant shall be refunded to the appellant and the bail bond executed by the appellant shall stand canceled.

Sd/-/-
Assistant Registrar (Co)

//True Copy//

Sub Assistant Registrar

nvsri
To

- 1.The Judicial Magistrate No.II, Villupuram
- 2.The Chief Judicial Magistrate , Villupuram(For Information)
- 3.The I Additional Assistant Sessions Judge, Villupuram.
- 4.do through the Principal Sessions judge,Villupuram.
5. The Inspector of Police,
Kanjapur Kodar Police Station
Villupuram District. [Crime No.105 of 2008]
- 6.The Superintendent ,Central Prison, Cuddalore.
- 7.The Public Prosecutor, High Court , Madras.
- 8.The Section Officer, V.R.Section, High Court, Madras.

Criminal Appeal No.325 of 2010

ASK(06/12/2018)