

BAIL SLIP

That the Appellant/Accused namely Rajendran S/o.Kumarasamy, was directed to be released on bail as per order of this court dated 18/07/2003 in Crl.M.P.No.5303/2003 in CRL.A.No.890/2003 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2018

DELIVERED ON : 31.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.890 of 2003
and
Crl.M.P.No.5303 of 2003

Rajendran
Vs
... Appellant/Accused

State By
Joint Superintendent of Police,
Tiruppur Sub-Division,
Coimbatore District.
...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, against the Judgment of the learned Additional Sessions Court, (FTC.No.4) Coimbatore at Tiruppur made in S.C.No.206 of 2001 dated 11.04.2002 convicting and sentencing the appellant to undergo rigorous imprisonment for 2 years and pay fine of Rs.2000/- in default to undergo a further sentence of 3 months R.I. for the offence under Section 498A of IPC and 7 years rigorous imprisonment and a fine of Rs.3500/- in default to undergo further sentence of 3 months R.I. for the offence under Section 306 of IPC which would run concurrently.

For Appellant : Mr.S.Sathiachandran

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is preferred by the appellant/accused against the judgment of conviction and sentence passed by the learned Additional Sessions Court (FTC No.4) Coimbatore at

Tiruppur made in S.C.No.206 of 2001 dated 11.4.2002 wherein the learned trial judge convicted and sentenced the appellant/accused to undergo rigorous imprisonment for 2 years and imposed a fine of Rs.2000/- in default to undergo a further a sentence of 3 months rigorous imprisonment for the offence under section 498A of IPC and 7 years rigorous imprisonment and imposed fine of Rs.3500/- in default to undergo further sentence of 3 months rigorous imprisonment for the offence under section 306 of IPC.

2.Brief case of the appellant/accused is that:

The prosecution case is that the appellant/accused Rajendran and deceased Kamala are husband and wife and their marriage was held with the concurrence of the two families 6 years ago. During the course of matrimonial life, the appellant/accused becomes drunkard and frequently used to torture and quarrel with his wife. On 2.1.2000 at about 2.00 P.M. to 4.00 P.M., one Bangaru ammal a neighbor of the deceased had informed that Kamala committed suicide. Immediately Tmt.Veerammal, mother of the deceased, rushed to her daughter's house and saw her daughter with burns. On enquiry she was told that on the day of occurrence, the appellant/accused beaten her wife and his children on seeing this Kamala has by self immolated. The Inspector of Police, Anuparipaiyam Police Station registered the FIR in Crime No.5 of 2000 under section 174 of Cr.P.C. dated 3.1.2000 on the complaint made from Tmt.Kamala. On receipt of the information, the Inspector of Police dispatched the FIR to the RDO for further enquiry. PW10, the RDO conducted the inquest and examined the witnesses and panchayatars and opined in his report that the deceased could have been suicide due to the case of torture and cruelty by the appellant/accused in Exhibit-P6. PW9, the Sub-Inspector of Police, recorded the statement from the deceased Kamala witnessed by her mother PW8 Veerammal and Doctor Rathinasamy and amended the FIR under section 498(A) of IPC. The complaint is Exhibit-P4 and the printed FIR is Exhibit-P5. PW11, the Inspector of Police conducted further investigation and inspected the scene of occurrence, drawn rough sketch and observation mahazar Exhibit-P7 in front of the witnesses Raja and PW5 Paulraj and recovered 5 Ltr. Plastic cane smelling Kerosene, match box with sticks and burned saree M.O.s 1 to 3 through mahazar Exhibit-P2. The Investigating Officer examined the witnesses namely PW1 Raju, PW2 Pangaruammal, PW3 Selvaraj, PW4 Subramani, PW5 Paulraj, PW7 Doctor Chitra and recorded their statements. On 4.1.2000, the investigating officer arrested the accused and remanded to judicial custody. On 06.01.2000, at about 13.40 P.M., on receiving the information from the Government Hospital that Kamala died due to the burn

injuries; alter the FIR under section 498(A) and 306 of IPC. PW12, the Deputy Superintendent of Police, conducted further investigation and examined the witnesses and filed the final report.

3.The learned trial Court framed the charges against the appellant/accused under sections 498(A) and 304(B) of IPC. The appellant /accused denied the charges.

4.During the trial, the prosecution examined PWs-1 to 12, marked Exhibits-P1 to P7 and M.O.s-1 to 3. No witness was examined on the side of the appellant/accused.

5.After the trial, on appreciating the material available on record the trial Court convicted the appellant/accused for the offences under section 498(A) and 306 of IPC and acquitted him in respect of the charge framed under section 304(B) of IPC. Aggrieved over the same, the appellant/accused preferred this criminal appeal.

6.The learned counsel for the appellant/accused submits that the trial Court has grossly erred in convicting the appellant/accused without appreciating the fact that it was he who took the deceased to the hospital after he came to know of the occurrence and especially, there was absolutely no delay in rushing to the hospital, which will reveal the fact that the appellant/accused had no intention to commit cruelty and drive the deceased to commit suicide.

7.The learned counsel for the appellant/accused submits that the trial Court has failed to appreciate that abetment to commit suicide under section 306 of IPC is totally, different from driving a woman to commit suicide as contemplated in section No.304-B of IPC.

8.The learned counsel for the appellant/accused submits that the trial Court has committed grave error in law in convicting the appellant/accused under sections 498A and 306 of IPC as there was no charge framed under section 306 of IPC and he has been denied and opportunity to effectively defend himself. Such surprise charge and conviction cannot be bounced on the accused, and the same is impermissible in law.

9.The learned counsel for the appellant/accused submits that the trial Court has erred in placing much reliance on the evidence of PW1, PW3 and PW8 who are father, brother and mother of the deceased who were not present at the scene of occurrence at that time and therefore, the conviction is unjust.

10.The learned counsel for the appellant/accused submits that the trial Court has erred in placing much reliance on the evidence of PW2, who is a neighbor, when the alleged occurrence had taken place and about 11.00 P.M. which could not have been witnesses by her.

11.The learned counsel for the appellant/accused submits that the trial Court has also failed to see that the appellant/accused was not present at the time of occurrence was self immolating, he rushed her to the hospital, which shows that the appellant/accused did not have any motive to commit the offences as alleged.

12.The learned counsel for the appellant/accused submits that the trial Court has palpably erred in awarding the maximum sentence on the appellant/accused for no concrete reason and the same shows the bias and prejudice of the trial Court against the appellant/accused which is disproportionate, unjust and uncalled for even on the materials available on record.

13.The learned Government Advocate (Criminal Side) appearing for the respondent opposed the contentions of the appellant/accused and supported the findings of the trial Court.

14.I have carefully considered the rival contentions urged by the counsel for the parties and gone through the records.

15.The prosecution mainly relies upon 3 following statements

- i) Exhibit-P4 statement of the deceased Kamala on 3.1.2000;
- ii) Exhibit-P6 the report of the RDO dated 7.1.2000;
- iii) Evidence of the Doctor.

16.The first and foremost thing to be noted in this case is that the appellant/accused himself brought the deceased Kamala to the hospital which is evident from Exhibit-P4. According to

Doctor PW7, the deceased Kamala was conscious with 100% burn injuries and admitted as inpatient, brought by her husband. According to Doctor, the intimation was sent to the police about the admission of deceased. But PW9 Sub-Inspector of Police came to the hospital only on 3.1.2000 and recorded their statement from the deceased at about 10.00 A.M. and registered Exhibit-P5.

17. There is no proper explanation given by PW9-Sub Inspector of Police for having recorded the statement of the deceased belatedly even though intimation was sent to the outpost of the hospital on previous night. It is a admitted fact that the appellant/accused was along with the deceased in the hospital and the accident register was not issued by the doctor PW7, who first examined the deceased. Then PW6 Doctor conducted the postmortem on 7.1.2000 at about 12.30 Noon and her report is Exhibit-P3. In brief, it is the case of the prosecution that PW9 Sub Inspector of Police though received the intimation about the admission of the deceased in the hospital on 2.1.2000 itself, he was not able to record her statement is quite contradictory to the evidence of PWs-1 to 4 and 8. As a matter of fact, PW7 Doctor would clearly mentioned that the victim deceased was conscious.

18. Another preposterous feature to be noticed in this case is that PW8 mother of the deceased could admit in the cross examination that PW9 obtained statement from the deceased and said statement was attested by the doctor who was present then. According to PW9, the mother of the deceased was also in the hospital and she made her left thumb impression in the statement made by the deceased. But PW9 in her chief examination deposed that she, her husband and her son took the deceased to the hospital from her matrimonial home and her daughter died after 5 days which is contra to the statement made by the deceased Kamala in Exhibit-P4. The vital document namely the accident register ought to have been issued by PW7 was not filed in this case raises serious doubt. The earlier statement given by the deceased to the doctor was screened for the reasons best known to the investigating officer. This apparent infirmity, in my view, would go to the root of the matter affecting the substratum of the prosecution.

19. There is no dispute in the fact that the deceased and the appellant/accused were not in good terms and there were previous complaint and cases pending between them. Further as per the evidence of PW 8 the mother of the deceased, her daughter earlier made attempts of suicide by consuming oleander seeds. Having felt that the deceased was in the dangerous condition,

the investigating officer ought to have informed to the judicial Magistrate for recording the dying declaration. No reasons was given either by PW9 and PW11 as to why they did not take to record the statement through the judicial officer, who could alone state the mental condition of the deceased to make a statement. So this Court feels that the earlier statement recorded from the deceased was suppressed and there was no cross examination on the part of the counsel which throws serious lacuna.

20.I was surprised to see that no cross examination was made by the counsel appearing for the defense against the doctor PW 7, who first seen the deceased Kamala with the burn injuries. Further one Doctor Rathinasamy who attested his signature in the statement of the deceased was not examined by the prosecution.

21.At the end, it would be appropriate to evaluate the evidence of the related witnesses PWs-1 to 4 and 8 on motive aspect also. According to the prosecution, the motive of the occurrence is that the appellant/accused tortured the deceased and committed cruelty. But all the witnesses materially contradicted each other on material particulars regarding demand of dowry and cruelty. The charge under section 498(A) was framed against the appellant/accused only on the basis of the hearsay allegation, namely demand for dowry. The trial Court also concluded that there was a harassment and torture for this reason. This finding, in my view, cannot be set to be correct on appreciating the evidence of the related witnesses namely PWs-1 to 4 and 8. The charge under section 306 was also not proved beyond reasonable doubt.

22.In the result:

a) This Criminal Appeal is allowed and thereby the conviction and sentence imposed on the appellant in S.C.No.206 of 2001, dated 11.04.2002, on the file of the learned Additional Sessions Judge/Fast Track Court No.IV, Coimbatore at Tiruppur, is set aside.

b) The appellant/accused is acquitted from all the charges and the fine amount, if any paid by the appellant/accused shall be refunded by the trial Court;

c) The bail bond if any executed by the appellant/accused shall stands cancelled.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vs
To

- 1) The Judicial Magistrate No.I,
Tiruppur.
- 2) The Chief Judicial Magistrate,
Coimbatore (for information).
- 3) The Additional Sessions Court,
(FTC.No.4) Coimbatore at Tiruppur.
- 4) The Principal Sessions Judge,
Coimbatore (for information).
- 5) The Superintendent,
Central Prison, Coimbatore
- 6) The Joint Superintendent of Police,
(Tirupur Sub-Division)
Coimbatore District.
- 7) The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.S.Sathiachandran, Advocate, S.R.No.74934

Judgment in
Criminal Appeal No.890 of 2003
and
Crl.M.P.No.5303 of 2003

AD(CO)
SSM(05/03/2019)