



BAIL SLIP

The Petitioners/Appellant namely Mr.S.Mehanathan, S/o.Subramani was directed to be released on bail by the Order of this Court in M.P.No.2 of 2009 in Crl.A.No.458 of 2009 order dated 25/11/2009 by this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.458 of 2009

S.Mehanathan

Appellant / Petitioner

Vs.

State by the Inspector of Police,
Madipakkam Police Station

Respondent / Complainant

PRAYER:- This Criminal Appeal is filed, under Section 374 (2) of Cr.PC, against the judgement of to set aside the judgement passed against the appellant on 06.07.2009 in SC.No.78 of 2009 on the file of the learned Sessions Judge, Mahila Court, Chengalpattu and acquit him.

For Appellant : Mr.G.Jeyachandran

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

1.This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 06.07.2009, made in SC.No.78 of 2007, by the Sessions Judge, Mahila Court, Chengalpattu, finding the Appellant/ accused guilty for the offences under Sections 498A and 304 of IPC and convicting and sentencing the appellant/accused for the offence under Section 498A of IPC to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default, to undergo three months rigorous imprisonment and for the offence under Section 304 of IPC, to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default, to undergo one year simple imprisonment and ordering the sentences to run concurrently.



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2.The case of the prosecution has arisen on the basis of the statement Ex.P15, dated 21.01.2006, given by the deceased, Jaya @ Jayalalitha, wife of the Appellant/ accused, while she was in the Royapettah Government Hospital, to the Respondent Police. It is alleged in the statement, Ex.P15 that the marriage between the Appellant/accused and her was solemnised on 05.02.1992 and out of the wedlock, they begot two male children and that right from the date of marriage, the appellant/accused used to fight with her, saying that he did not like her and that she should go elsewhere and that on 20.01.2006 at about 7.30 p.m., when the deceased was conversing with PW.1, Kamala, neighbour staying in the ground floor portion, the appellant/accused came there and scolded the victim as to why she was conversing with PW.1 and whether the victim was planning to elope with somebody else and so saying, he went to the house and asked the victim to prepare coffee for him and the deceased questioned him as to why he was quarrelling with her often. It is further stated by the deceased that the appellant/accused told the victim that she was a hindrance to him and so saying, he took the kerosene can and poured the same on her and set her ablaze and that when she raised an alarm, PW.1 came upstairs and enquired the appellant/accused and thereafter, she took the injured victim to a private hospital and came back home. On the next day morning, i.e., on 21.01.2006, with the help of PW.1, the victim was admitted in the Royapettah Government Hospital for further treatment and without responding to the treatment, the victim died on 24.01.2006. After investigation, the appellant/accused was charge sheeted for the offences under Sections 498A and 302 of IPC.

3.The case was taken on file in SC.No.78 of 2007, by the Sessions Judge, Mahila Court, Chengalpattu and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the Prosecution had examined PW.1 to PW.19 and CW.1 and marked Exs.P1 to P.23 and MOs. 1 to 5. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of the prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case.

4.The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded punishments as referred to above, which is challenged in this Criminal Appeal.



5.This Court heard the submissions of the learned counsel on either side.

6.The learned counsel for the appellant would submit that the impugned judgement of the court below is based on assumptions, surmises and conjectures and that the Trial Court has failed to see that there was no eye witnesses to implicate the appellant/accused and that the first document, which had come into existence is Ex.P18, accident register, wherein the victim had deposed that she had sustained burn injury due to accidental fire, due to stove burst on 20.01.2006 at 8.00 p.m. and it has been spoken to by PW.17 Doctor, who had admitted the victim at the Royapettah Government Hospital and deposed that when he had examined the victim, she was capable of speaking and she was oriented and when that being the first statement, the trial court had erred in convicting the appellant based on an inconsistent dying declaration, which was stated to be recorded by PW.15, Judicial Magistrate.

7.The learned counsel for the Appellant/ accused would further submit that recording of such dying declaration itself is doubtful, since it could not have been recorded as spoken to by PW.15, Judicial Magistrate and that PW.15, in her evidence on oath, had stated that she received the request for recording dying declaration on 23.1.2006 at 5.30 p.m. while she was the VII Metropolitan Magistrate at Chennai and that she had gone to the Royapettah Government Hospital at 5.40 p.m. and on being identified by the Doctor, she recorded her statement.

8.The learned counsel for the Appellant/ accused would further submit that the Judicial Magistrate had also reiterated that the dying declaration was recorded at 6.50 p.m. on 23.01.2006, however taking into consideration Ex.P19, the victim was admitted at Kilpauk government hospital on 23.01.2006 at 4.15 p.m. and thereby the evidence of PW.15 and the dying declaration recorded by her under Ex.P14 are doubtful and that when there is a doubt with regard to the dying declaration recorded by the Judicial Magistrate, the trial Court ought to have relied on the initial statement given by the victim that she had sustained injuries in an accidental fire due to stove burst.

9.The learned counsel for the Appellant/ accused further submit that there is absolutely no material to establish that there was a demand of dowry by the appellant/accused and that the victim was subjected to matrimonial cruelty and that admittedly the marriage between the appellant/accused and the victim took place 15 years prior to the occurrence and that there was absolutely no relationship between the victim and her parental home and that when there is no evidence that the deceased was



subjected to matrimonial cruelty, the Trial Court erred in convicting the appellant for the offence under Section 498A of IPC and that PW.6 and PW.7, who are the sons of the Appellant/accused as well as the victim deceased, have not supported the case of the Prosecution and further PW.1, who is the neighbour has also not spoken about the demand of dowry or matrimonial cruelty.

10.The learned counsel for the Appellant would further submit that according to the Prosecution, the deceased was the author of the First Information Report and the statement of the deceased was said to have been recorded by PW.13, Sub Inspector of Police, in the presence of PW.16 at about 12.00 p.m. on receipt of the information from the Royapettah Government Hospital and thereon, the case was registered in Cr.No.147/2006 and that contrary to the statement, PW.1 in her statement recorded under Section 164 of Cr.PC, has categorically stated that the Police obtained the thumb impression of the deceased in the Royapettah Government Hospital in her presence and thereby falsifying the case of the Prosecution that the signature of the victim deceased was obtained in Ex.P10 and that PW.1 has further categorically stated that the victim was under the influence of medicine and under unconscious state of mind when the statement was recorded and her thumb impression was obtained and thereby falsifying the case of the Prosecution. He would further submit that the statement was recorded from the victim deceased when she was not in good conscious of mind and thereby creating a doubt about the certification made by PW.16 Doctor, in the statement and that non examination of the brother of the deceased victim, one Murthy, who had admitted her in the Kilpauk Medical College and Hospital and the non examination of the mother of the deceased victim and the uncle of the victim deceased, who was stated to be all along with her, from 21.06.2006 to 24.01.2006 till the date of her death creates a grave doubt with regard to the case of the Prosecution and that the Prosecution has attempted to suppress this evidence and thereby creating a grave doubt in the case of the Prosecution.

11.Per contra, the learned Additional Public Prosecutor would submit that though in Ex.P18, the victim deceased is said to have informed the Doctor that she sustained burn injuries due to an accidental fire by stove burst, it has been categorically explained by PW.1, who had stated that she had given such a statement to protect her husband and thereafter, a statement had been recorded from the victim deceased by PW.13 in the presence of PW.16 Doctor, who had certified that the victim/deceased was conscious at the time of giving the said statement and thereafter, the Prosecution had given a requisition to the Judicial Magistrate to record the dying



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declaration on 23.01.2006, based on which, the Judicial Magistrate, PW.15 had recorded the dying declaration in the presence of PW.16, Dr. Rossy and that in the dying declaration, she has stated that there were frequent fights between her and her husband and that on Friday, at around 6.00 p.m. there was a fight between them, pursuant to which, saying that she is going to die, she had taken kerosene can in the house and at that time, the Appellant/ accused told that he himself do that and saying that she is useless, he poured kerosene on her and set fire on her and that the dying declaration was recorded by PW.15 and that PW.16 has also certified prior to recording of the statement and also after conclusion of recording the statement. He would further submit that PW.18 has also stated that the victim was admitted on 23.1.2006 at 4.15 p.m and that during her treatment, she had stated that on examination, the patient was found to be conscious and that the minor discrepancies with regard to the time will not affect the case of the Prosecution, since the Doctor has certified with regard to the consciousness of the victim and the statement has been recorded by a Judicial Magistrate.

12.I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

13.The points that arise for consideration are as to whether the Prosecution has proved its case beyond all reasonable doubts and whether the Prosecution is justified in convicting and sentencing the Appellant/ accused for the offence under Sections 498A and 304 of IPC, as stated above.

14.The marriage took place between the Appellant/ accused and the deceased on 5.2.1992. The date of occurrence is 20.01.2006 at about 7.00 p.m. i.e. after 14 years of the marriage. The deceased died on 24.1.2006 at 7.50 a.m.

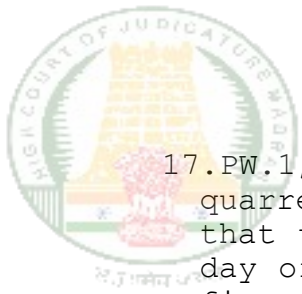
15.PW.1, Kamala, neighbour, has spoken about the alleged incident and taken the deceased to the Government Hospital, Royapettah, and on 15.2.2006 had made a statement under Section 164 of Cr.PC. PW.2, brother of the deceased, hearsay witness, had stated that PW.1 informed him about the admission of the deceased in the Hospital. PW.3, Auto Driver, has spoken about transporting the deceased and PW.1 to the Royapettah Hospital on 21.06.2006 at about 9.00 a.m. PW.4, Scientific Assistant, has spoken about the receipt of the articles received from the Judicial Magistrate, Alandur Court for chemical analysis and



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about the chemical analysis report. PW.5 is the mahazar witness. PW.6 is the attesting witness. PW.7 and PW.8 are the sons of the deceased, aged 16 and 12 years on the date of deposition and they were treated as hostile witnesses. PW.9 is the Staff of the Private Hospital, who gave first aid to the deceased. PW.10, Judicial Magistrate, had recorded the statement from PW.1. PW.11 is the Doctor of Kilpauk Medical College, who informed the police about the death of the deceased. PW.12 is the Doctor, who conducted the post-mortem. PW.13, Sub Inspector of Police has spoken about the recording of the statement of the deceased and registration of the First Information Report. PW.14 is the Court Staff, who sent the material objects to the forensic science Department for chemical analysis and spoken about the same. PW.15, the Subordinate Judge of Tindivanam Sub Court, has spoken about the recording of dying declaration. PW.16 Dr.Rossy has certified about the mental condition of the deceased at the time of recording Ex.P13 statement by PW.13 on 21.01.2006 at about 12.00 a.m. and then again at the time of recording Ex.P16 dying declaration on 23.01.2006 at 6.50 p.m. PW.17 Doctor has spoken about the 1st accident register, Ex.P18 and admission of the deceased in the burn injury ward. PW.18 Doctor has spoken about the second accident register, Ex.P19 and admission of the deceased in Kilpauk Medical College. PW.19 is the Investigating Officer, who has spoken about the investigation of the case and recording statement of the witnesses and filing of the charge sheet.

16.Ex.P1 dated 23.01.2006 is the requisition sent by the Judicial Magistrate, Alandur, for chemical analysis. Ex.P2 is the chemical analysis report. Ex.P3 is the observation mahazar. Ex.P4 is the seizure mahazar. Ex.P5 is the requisition sent by the Chief Judicial Magistrate, Chengalpattu. Ex.P6 is the statement recorded from PW.1. Ex.P7 is the copy of the death report of the deceased. Ex.P8 is the toxicology report. Ex.P9 is the post-mortem certificate. Ex.P10 is the statement of the deceased. Ex.P11 is the printed First Information Report. Ex.P12 is the letter sent by the Inspector of Police, Madipakkam, to the Forensic Science Department. Ex.P13 is the requisition sent by the Inspector of Police, Madipakkam, to record the dying declaration of the deceased. Ex.P14 is the dying declaration. Ex.P16 and Ex.P17 are the medical certificates. Ex.P18 is the first accident register in respect of the deceased. Ex.P19 is the second accident register in respect of the deceased. Ex.P20 is the rough sketch. Ex.P21 is the statement recorded under Section 161(3) of Cr.PC from the deceased. Ex.P22 is the investigation report in respect of the death of the deceased. Ex.P23 is the alteration report.



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17.PW.1, Kamala, neighbour, had deposed that there were frequent quarrels between the deceased and the Appellant/ accused and that the deceased used to tell the same to her and that on the day of occurrence, there was a quarrel between them and that a five litre kerosene was in the house of the deceased and that on hearing the alarm of the deceased, she went upstairs and saw the deceased burning and that the Appellant/ accused had told her that stove was burst and that the deceased was taken to the Private Hospital and after treatment, they came back and that she had given false statement that stove war burst only to protect her husband. She had further deposed that in the Government Hospital at Royapettah, the deceased had told that her husband only set fire on her, by pouring kerosene.

18.Though as per Ex.P18, the victim was alleged to have stated that she had sustained injuries due to accidental fire due to stove burst, the reason for giving such a statement has been explained by PW.1, who had admitted her in the Hospital. Further, in the statement recorded from the victim by PW.13 in Ex.P10, the victim has spoken about the occurrence. Further, in the dying declaration also, the victim has implicated him.

19.In order to attract the provisions of Section 498A of IPC, the cruelty or harassment meted out to the wife by her husband or relatives of her husband should be to the extent that it became unbearable. Thus, the essential ingredients of Section 498A of IPC are (1) a woman must be married, (2) she must be subjected to cruelty and (3) cruelty must be of the nature of harassment of such woman, with a view to coerce her to meet unlawful demand for property or valuable security.

20.On analysis of the entire evidence, this Court is able to see that the Prosecution has not let in evidence to prove the charges under Section 498A of IPC. In other words, this Court is of the view that the Prosecution has not let in sufficient evidence to show that the Appellant/ accused had subjected the deceased/victim-his wife to cruelty, which was of such a nature as was likely to drive the victim to commit suicide or cause grave injury or danger to her life, limb or health, thereby satisfying the requirements of section 498A IPC. Therefore, the conviction and sentence imposed on the Appellant/ accused under Section 498A of IPC is to be set aside.

21.Admittedly, the victim and the Appellant/ accused got married about 14 years prior to the occurrence and there was no relationship between the parental home of the deceased victim



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and her. Further, the evidence of PW.1 is also not in categorical terms as to the demand of dowry or matrimonial cruelty committed on the victim deceased. However, this Court is able to see that there was a quarrel between the spouses and that the victim deceased had herself brought the kerosene can and told him that she is going to die and at that time, the Appellant/ accused, saying that he himself kill her, poured kerosene on her and set fire on her. The Trial Court relying on the dying declaration has rendered a finding that there was a quarrel and during such a quarrel, the Appellant/ accused called her as useless person and thereby, the victim herself had gone into the house and brought the kerosene can and threatened to immolate herself and at that time, the Appellant had, in the spur of the moment, told that he himself will do that and thereby, out of sudden aggravation and provocation, he had done the act and thereby, the Trial Court, finding that there was no intention, had rightly convicted the Appellant/ accused for the offence under Section 304 of IPC, which warrants no interference by this Court.

22. Now coming to the question of sentence, the learned counsel for the Appellant/Accused would submit that in this case, the two sons of the deceased, who are stated to have been present at the time of occurrence and who have been examined as PW.7 and PW.8, have stated that their mother had committed suicide and they have not supported the case of the Prosecution. Further, they have been brought up by the Appellant and that after the occurrence, the Appellant had suffered incarceration during investigation and after conviction and that the occurrence had taken place during the year 2006 and more than thirteen years have lapsed and that the mitigating circumstances can be considered for reduction of sentence. Taking into consideration the mitigating circumstances that 13 years have passed, the conviction and sentence imposed on the Appellant/ accused under Section 304 of IPC can be modified from five years to one year Rigorous Imprisonment.

23. In the result, this Criminal Appeal is partly allowed. The Appellant is acquitted from the charges levelled against him for the offence under Section 498A of IPC alone. The fine amount, if any, paid by the Appellant for the offence under Section 498A of IPC is directed to be refunded to him. However, in so far as the conviction and sentence imposed on the Appellant/ accused under Section 304 of IPC is concerned, the conviction and sentence imposed on the Appellant/ accused is modified from five years Rigorous Imprisonment to one year Rigorous Imprisonment and the fine amount with default sentence imposed for the offence under Section 304 of IPC shall stand



unaltered. The Appellant/Accused is on bail and the bail bond executed by him shall stand cancelled. The Trial Court concerned shall take necessary steps to secure the presence of the Appellant/Accused to undergo the remaining period of sentence.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Jrs/Srcm

To:

1. The Sessions Judge, Mahila Court, Chengalpattu
2. The Judicial Magistrate, Alandur.
3. The Inspector of Police, Madipakkam Police Station
4. The Public Prosecutor, High Court, Madras
5. The Superintendent,
Central Prison, Puzhal.

+1 cc to Mr.G.Jayachandran, Advocate, S.R.No.66966

Crl.A.No.458 of 2009

SJ(CO)
SSM(30/08/2019)