

Bail Slip

The Appellant herein/Accused namely Rajan, S/o. Mani be and hereby is directed to be released on bail as per the order of this Court dated 05.07.2010 made in CrI.M.P. 1/2010 in CrI.A.No.394 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.394 of 2010

Rajan

Appellant/Accused

Vs

State by Inspector of Police
T10, Thirumullaivoyal Police Station
Tiruvallur District

Respondent/Complainant

Prayer:- This Criminal Appeal has been filed, against the judgement of conviction and sentence, dated, 09.06.2010, made in SC.No.1 of 2010, by the Additional District Sessions Judge (FTC-2), Poonamallee.

For Appellant : Mr.T.P.Sekar
For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

1.This Criminal Appeal has been filed, against the judgement of conviction and sentence, dated, 09.06.2010, made in SC.No.1 of 2010 , by the Additional District Sessions Judge (FTC-2), Poonamallee, finding the Appellant guilty for the offences under Sections 326 and 498A of IPC and convicting and sentencing him for the offence under Section 326 of IPC to undergo three years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months Simple Imprisonment and for the offence under Section 498A of IPC to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months Simple Imprisonment and ordering the sentences to run concurrently.

2.The Appellant/ accused was charge sheeted for the offence under Sections 498A and 307 of IPC, alleging that the Appellant/Accused is the husband of the victim, Asha, PW.8 and that on or before 10.06.2007, at the house of the PW.8, at house No.446, 9th Street, Saraswathi Nagar,

Thirumullaivoyal, the Appellant/Accused subjected the victim to cruelty and harassed her physically and mentally, by neglecting her without giving money for family expenses and by marrying another girl, thereby constituting the offence under Section 498A of IPC and further alleging that on 10.06.2007, at about 11.00 hours in the above said house, when the victim poured kerosene on herself and threatened to set fire to herself to correct the behaviour of the accused, the Appellant, with an intention to cause the death of the victim, lighted a match stick and thrown the same on her body and thereby caused grievous burn injuries to her, thereby attracting the offence under Section 307 of IPC.

3. The final report was taken on file in PRC.No.27 of 2009, by the Judicial Magistrate II, Poonamallee. After compliance of the procedure contemplated under Section 207 of Cr.PC and having found that the case was exclusively triable by the Court of Sessions, the case was committed to the Principal District and Sessions Court, Poonamallee and renumbered as SC.No.1 of 2010 and charges were framed under Sections 498A and 307 of IPC. The accused had denied the charges and sought for trial. In order to bring home the charges against the Appellant/Accused, the Prosecution had examined PW.1 to PW.10 and marked Exs.P1 to P13 and MO.1, match box.
4. On completion of the evidence on the side of the Prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case.
5. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found Appellant/Accused found guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal. सत्यमेव जयते
6. This court heard the submissions of the learned counsel on either side.
7. The learned counsel for the Appellant would contend that though the occurrence had taken place on 10.06.2007 at 11.00 a.m. and the First Information Report was registered on the same day, the First Information Report was sent to the Court concerned on 11.06.2007 at 6.05 p.m thereby suggesting that the First Information Report was prepared after completing the material investigation. He would further contend that the Trial Court, having found that there is no material to show that the Appellant/Accused had committed the offence of attempt to murder envisaged under Section 307 of IPC, erred in convicting the Appellant/Accused for the offence under Section 326 of IPC.

- 8.The learned counsel for the Appellant/Accused would further contend that the evidence of the Doctors, PW.6, V.Jayaraman and PW.7, Mehajabeen, is purely based on the case history mentioned in the Hospital prepared by the Investigating Officer and that except the victim, none of the other witnesses have deposed anything about the occurrence and that Ex.P9, observation mahazar and Ex.P10, rough sketch, do not reveal the presence of kerosene on the floor and burned match stick and that the burnt stick, kerosene can and the bottle were not seized by the Prosecution. He would further submit that Ex.P7, Complaint, also revealed that though the Appellant had visited the residence of the victim, PW.8, 09.06.2007, but the victim has not deposed anything about the said fact and that in Ex.P5, case sheet, the Ward Doctor had recorded the statement of the victim that PW.8 was abused by neighbours as she was alone in the house.
- 9.The learned counsel for the Appellant would further submit that when there is no material to prove the marriage took place between the Appellant and the victim and the relationship between the Appellant and the victim as husband and wife, to attract the offence under Section 498A of IPC, the Trial Court erred in finding that the Appellant and the victim are husband and wife and they have a child and that the Appellant had subjected the victim to cruelty and that there are improvements and contradictions in the evidence of the victim, PW.8 and that the Prosecution has not examined the Doctor, who gave first aid to the victim and not seized the burnt nighty and that there are contradictions regarding the date and place of arrest of the Appellant and that no witness has spoken about the presence of the Appellant at the scene of occurrence.
- 10.The learned counsel for the Appellant would further submit that while the victim was admitted in the Hospital, the duty Doctor had intimated the Judicial Magistrate and a dying declaration was recorded from the victim, PW.8, by the Judicial Magistrate, in which she had stated that due to a quarrel, she had taken a kerosene can and poured kerosene on herself and that her husband, who was present there, had poured water over her and thereafter, she had gone into the house and lit herself and even thereafter, her husband had poured water on her and thereafter, left the place and that later, she had gone to the Police Station and that her husband was brought to the Police Station and only thereafter, she along with her husband and sister in law came to the hospital. Further, in the dying declaration, she had reiterated that she is responsible for the injuries on her. Whereas though the dying declaration was available in the file, the Respondent, for the best reasons known to them, buried and suppressed it to foist a false case on the Appellant. He would further submit that though the dying declaration was available in the file, the Trial Court failed to take into consideration the available material and

thereby, erred in convicting the Appellants and that the Prosecution has miserably failed to prove its case beyond all reasonable doubts and consequently, the Appellant is entitled for acquittal.

11. Per contra, the learned Additional Public Prosecutor for the Respondent would contend that though the test identification parade was not conducted, the Prosecution has proved its case beyond all reasonable doubts, by letting in valid evidence, both oral and documentary and hence, he would pray for dismissal of this Criminal Appeal.

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

13. A perusal of the impugned judgement of conviction and sentence reveals that the Trial Court has imposed conviction and sentence on the Appellant mainly based on the evidence of the victim, PW.8 and the evidence of the Doctors.

14. 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 326 of IPC, as stated above, for which the oral and documentary are analysed as under.

15. Before analysing the evidence, at this juncture, for easy reference, Sections 498A and 326 of IPC are to be extracted. Section 498A of IPC reads as under:-

"498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

16. Section 326 of IPC reads as under:-

"326. Voluntarily causing grievous hurt by dangerous weapons or means :- Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

17. Now coming to the evidence, PW.1, Muniammal had deposed that she is living nearby the residence of the Appellant/Accused in Thirumullaivoyal and that she knows the Appellant/Accused and also the wife of the Appellant/Accused, namely, Asha and that two years before the time of occurrence, she went to Bangalore and she does not know anything about the occurrence and she had been treated as hostile.

18. PW.2, Ramesh, had deposed that he is working as a Coolie and that he knows the wife of the Appellant/Accused, namely Selvi @ Asha, but he does not know the Appellant/Accused and that he does not know anything about the occurrence and he had also been treated as hostile.

19. PW.3, Mohan, had deposed that he is doing business and that he does not know anything of the Appellant/Accused as well as the wife of the Appellant/Accused and the occurrence and he had also been treated as hostile. PW.4, Arumugam, has deposed that he is doing Real Estate business and he had signed the observation mahazar, but he does not know anything about the occurrence and he had been treated as hostile. PW.5, Elumalai, had deposed that he is working as a Mason and he does not know anything about the occurrence and he had been treated as hostile.

20. PW.6, Dr. Jeyaraman, was working as Dean in the Medical College Hospital and he had deposed that on 10.06.2007, one Asha was admitted in the Hospital and he asked the injured about the said occurrence and that she told that there was a dispute between her and her husband viz., Appellant/Accused and on that reason, she poured kerosene on her body and the Appellant/Accused threw a lighted match stick on her and she had also stated that her marriage was conducted before 3 ½ years and she has a child. The Doctor after examining the injured had given a wound certificate,

stating that there was 15% of burn injuries on her face, neck and chest and she was discharged on 18.06.2007 at 2.00 p.m. and the wound certificate was marked as Ex.P4 and that the nature of injury is a grievous one.

21.PW.7, Dr.Mehajabeen, was working as Chief Doctor in Medical College had deposed that on 10.06.2007, P.W.8, Asha along with one lady constable came for taking treatment and that at that time, she was conscious and oriented and that she has stated that there was a dispute between her and her husband Rajan and based on that dispute, she was motivated to commit suicide, by pouring kerosene on her body and at that time the Appellant/Accused threw a lighted match stick on her. The Doctor after examining the injured, had issued a copy of Accident Registrar (Ex.P6) which shows the burn injuries in her chest, stomach, hands and neck with kerosene smell. The Doctor had given first aid to her and admitted as an inpatient.

22.The victim, Asha is the wife of the Appellant/Accused and she was examined as PW.8. She had deposed that on the day of occurrence, the appellant/accused stated that only after her death, the entire problem will be resolved and stating so, he threw a lighted match stick on her. She had further deposed that on such enraged by such scolding of her husband, she poured kerosene on her and shouted and left the house and the appellant/accused also left the house and that only the neighbours had saved her and that thereafter, she had given the complaint before the Thirumullaivoyil Police Station and the said complaint was marked as Ex.P7 and that she had been taken to the nearby hospital.

23.PW.9, Babu had deposed that he is doing business and he had been treated as hostile.

24.PW.10, Vinayagam, Investigating Officer had deposed that on 10.06.2007, he was working as Inspector of Police, Thirumullaivoyil Police Station and that he received a complaint given by Asha and had registered the same in the First Information Report in Cr.No.313 of 2007 under Section 307 and the said FIR was marked as Ex.P8 and thereafter he went to the scene of occurrence and prepared the observation mahazar in the presence of witnesses Babu and Arumugam and the said observation mahazar was marked as Ex.P9 and prepared a rough sketch which was marked as Ex.P10. Thereafter, he had examined the witnesses and Asha and recorded their statements and thereafter, he got permission from learned Judicial Magistrate for taking Dying Declaration and on 11.06.2007, at 6.00 a.m., arrested the appellant/accused in the presence of witnesses Umapathy and Elumalai and he had enquired the appellant/accused and recorded his confession statement. In his confession statement, he has stated that if he was asked to come along with the police, he would produce the match box which was

marked as Ex.P11 and thereafter, recovered the Match Box, MO.1, in the presence of witnesses and prepared mahazar which was marked as Ex.P12 and that thereafter, he had produced the appellant/accused before the Court and he enquired and recorded the statement of Dr.Mahanujeen, who had given Accident Register and thereafter he enquired and recorded the statement of Dr.V.Jayaraman, who has given the wound certificate.

25.It is seen from the evidence of the witnesses that the occurrence had taken place on 10.06.2007, at 11.00 a.m. and the First Information Report was registered on the same day at 14.00 p.m. and the the Appellant/Accused was arrested on 11.06.2007 and First Information Report was sent to the Court concerned on 11.06.2007 at 6.05 p.m.

26.When there is a specific and categoric finding by the Trial Court to the effect that there is no material to show that the Appellant/Accused had committed the offence of attempt to murder envisaged under Section 307 of IPC, the Trial Court grossly erred in convicting the Appellant/Accused for the offence under Section 326 of IPC, holding that the Appellant had voluntarily caused grievous hurt, by spilling kerosene and setting her ablaze.

27. This Court, based on a memo filed by the Appellant/Accused called for the records from the Trial Court, which contained dying declaration. The dying declaration had been recorded by the 21st Metropolitan Magistrate, Egmore, Chennai-8 on 11.6.2007 at 6.00 p.m. at the Kilpauk Government Hospital in the burns ward in the presence of duty Doctor, C.Selvakumar.

28.On perusal of the dying declaration, it is seen that there was a quarrel between the Appellant and the victim, PW.8 on 10.6.2006 and at that time, the victim had informed that she is going to die and she had poured kerosene over herself and that the Appellant/Accused had poured water on her. Thereafter, she herself brought the can out of the house and lit her and that once again the Appellant/Accused had poured water over her and doused the fire and that thereafter, she herself had gone to the Police Station and informed the Police and the Police had come to her house and thereafter, gone to Ayanavaram and from Ayanavaram, the Appellant/Accused and her sister had taken the victim to the hospital and she had categorically stated that she sustained burn injuries due to her own act. Further, as per the evidence of PW.6, Dr.N.R.Venkataraman, the victim had stated that her husband had left her and thereby, she herself had poured kerosene on her and lit herself. Further, according to PW.6, he had enquired the victim and she had stated that she poured kerosene on herself, disgusted with people's talk about her living alone. It is also corroborated by the evidence of PW.7, Dr.Mehajabeen, Senior Surgeon. Whereas, strangely, the victim had stated as if she had poured

kerosene and that the Appellant/Accused had lit her by a match stick. The evidence of PW.6 and PW.7 is supported by the dying declaration recorded by the Judicial Magistrate. The dying declaration recorded by the Judicial Magistrate had been suppressed by the Prosecution. Further, all the other documents, including the First Information Report and the case sheets and the accident register have been sent to the Court much belatedly, thereby creating a doubt in the case of the Prosecution that the statements of the victim is only an afterthought to falsely implicate the Appellant. Further, all the other independent witnesses have not supported the case of the Prosecution.

29. In the opinion of this Court, the evidence of the victim, PW.8, nothing but an exaggerated one, which lacks credence and does not inspire confidence. In view of the above contradictions in the evidence and infirmities in the other connected records, this Court is of the opinion that the Prosecution has miserably failed to prove its case beyond all reasonable doubts and the Trial Court erred in convicting the appellant/ accused, based on the evidence of the victim, PW.8, which lacks credence and does not inspire confidence. Consequently, the impugned judgement of conviction and sentence is liable to be set aside.

30. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The Appellant is acquitted of the charges levelled against him. The bail bond if any executed by the Appellant shall stand cancelled and the fine amount if any paid by the Appellant shall be refunded to him.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

Srcm

To:

1. The Additional District Sessions Judge (FTC-2), Poonamallee.
 2. The Inspector of Police, T10, Thirumullaivoyal Police Station, Tiruvallur
 3. The Public Prosecutor, High Court, Madras
- +1 CC to Mr. T.P. Sekar, Advocate sr 62598.

Crl.A.No.394 of 2010

BS (CO)

SP(12/11/2019)