

Bail Slip

The Petitioner/Accused Viz., S.Elango S/o Mr. Subramaniam was released on bail as per order of this Court dated 12/08/2010 in Crl MP 1/2010 in Crl a 478/2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.478 of 2010

S.Elango Appellant/Accused

Vs

State Rep. By Inspector of Police,
Sankar Nagar, Police Station,
Pammal, Chennai-600 075. Respondent

Prayer:- This Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the judgement of conviction and sentence, dated 20.07.2010 made in S.C.No.432 of 2004 by the by the Sessions Court (Mahila Court), Chengalpattu.

For Appellant : Mr.R.S.Diwakaar
for M/S.Rajnish Parthiyil

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

1.This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 20.07.2010, made in SC.No.432 of 2004, by the learned Sessions Judge, Mahila Court, Chengalpattu, acquitting the Appellant/ accused for the offence under Section 306 of IPC and conviction and sentence the Appellant for the offence under Section 498 A of IPC to undergo two years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months Rigorous Imprisonment.

2.The facts leading to filing of this Criminal Appeal are as follows:-

a) The appellant/accused was married with the deceased Gunavathi on 04.12.1989 and after marriage, they were

residing at No.48, VOC.Nagar, Om Parasakthi Koil Street, Pammal, Chennai. Prior to 11.09.2001, the appellant/accused had an affair with another women, due to which he had been assaulting and committing cruelty on the deceased Gunavathy and due to such cruelty meted out to her, on 11.09.2001, the deceased consumed poison and also self-injected a drug, due to which she died on 11.09.2001. Based on the information given by K.Ramachandran, the father of the deceased, on 11.09.2001, a case in Crime No.663/2001 was registered under Section 174 of Cr.PC. After competition of investigation, the respondent police had filed the Final Report against the Appellant/ accused for the offence under Sections 498A and 306 of IPC, before the learned Judicial Magistrate, Tambaram.

- b) On appearance of the accused before the learned judicial Magistrate, Tambaram and after compliance of Section 207 of Cr.PC, in handing over the documents relied on by the Prosecution, the learned Magistrate, finding that the case is exclusively to be tried by a Court of Sessions, committed the case to the learned Principal District and Sessions Judge, Chengalpattu, who had made over the case to the Mahila Court, Chengalpattu.
 - c) The case was taken on file in SC.No.432 of 2004 by the Sessions Court (Mahila Court) Chengalpattu and charges were framed for the offence under Section 306 of IPC. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, on the side of the Prosecution, PW.1 to PW.16 were examined and Exs.P1 to P22 were marked. MO.1 to MO.9 were marked and a court document was marked as EX.C1.
 - d) On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of the prosecution witnesses and the accused had come with the version of total denial and stated that he had been falsely implicated in this case. On the side of the defence, neither any witness was examined nor any document was marked.
 - e) The Trial Court, 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.
- 3.This court heard the learned counsel on either side.
- 4.The learned counsel for the appellant would assail the impugned judgement of Criminal Appeal passed by the Trial Court on the following grounds:-
- a) The Trial Court, having disbelieved the witnesses and the evidence produced before the Court and having acquitted the Appellant for the offence under Section 306 of IPC, erred

in convicting the Appellant/ accused for the offence under Section 498A of IPC on the same set of facts.

- b) The Trial Court, having held that PW.1, PW.9 and PW.10 are important witnesses in the case and having held that PW.9 and PW.10 have deposed about the alleged incidents of cruelty and harassment, for the first time during trial and having found that they have not stated the same to the Police under Section 161 of Cr.PC and having rendered a finding that the evidence is blemished with exaggerations and thereby not worthy of credence ought to have acquitted the Appellant for the offence under Section 498A of IPC also.
5. The learned counsel would further submit that originally it was not the case of the Prosecution that the Appellant had illicit intimacy with PW.1 and even taking into consideration the evidence of PW.10, she had not stated as if she had seen the Appellant/ accused and PW.1 in a compromising position or in a indecent posture. PW.10 had only deposed that she had seen the Appellant and PW.1 in the room and nothing had been spoken during the time of investigation by PW.10 that her father, the Appellant/ accused had an affair or illicit intimacy with PW.1. Further, for the first time, before the Court, PW.9 had deposed that the Appellant/ accused had an affair with PW.1, however, it is unbelievable and strange that he does not know the name of PW.1.
6. The learned counsel for the Appellant/ accused would submit that the Trial Court having disbelieved Ex.P4, ought not to have convicted the Appellant/ accused placing reliance on the evidence of PW.10, which is nothing but an exaggeration, which has been spoken by her only at the time of trial and not being spoke at the time of investigation. He would further submit that the finding of the Trial Court that the evidences of PW.1 and PW.15 substantiate the version of PW.10 is wrong and that PW.15 is a witness planted for the purpose of the case and he is only an hearsay witness and his evidence cannot be relied on and even taking into consideration his evidence, he had given an exaggerated version before the Court and that though the witnesses have spoken about an earlier incident, where the Appellant was said to have beaten the deceased and caused injuries, it is the evidence of PW.14, Inspector of Police that during his investigation, he did not come across any complaint or case being registered against the appellant for having assaulted the deceased earlier and thereby, it can be inferred that the entire evidence given by the witnesses during trial was nothing but an exaggerated one. It is the categoric admission of PW.14 and PW.16 that the witnesses have not spoken anything during investigation that the deceased was subjected to cruelty and harassment by the appellant.

7. The learned counsel for the Appellant would further submit that the Trial Court has disbelieved the evidence of PW.4 and that even assuming for the sake of argument that Ex.P4 is taken into consideration, all the averments stated in Ex.P4 relate to the incidents, which had happened prior to 1.12.1990. When the Trial Court having disbelieved the veracity of Ex.P4, the Trial Court ought not to have believed the evidence of PW.10, who was in the custody of PW.9, her grand father and that there was every possibility of her being tutored to speak against the Appellant/ accused, when especially nothing had been spoken by her during the time of investigation.
8. In support of his contention regarding the witnesses having spoken to about some incidents for the first time before the Court, the learned counsel for the Appellant would rely on 2010 1 LW(Crl) 1299 (Selvarasu and others Vs. State of Tamil Nadu).
9. The learned counsel for the Appellant would further contend that when the witnesses have not stated anything in the First Information Report or in the statements recorded under Section 161 of Cr.PC and spoken about certain facts for the first time, their version lacks credence and it is to be discarded. In support of such contention, he would rely on the decision of the Honourable Supreme Court reported in 2008 15 SCC 440 (Inspector of Police, Tamil Nadu Vs. Sait @ Krishnakumar), MANU/TN/3259/2009 (S.Venkatachalam Vs. State) and 2010 13 SCC 657 (Sunil Kumar Sabhudayal Gupta and others Vs. State of Maharashtra).
10. The learned counsel for the Appellant would reiterate and submit that the Trial Court having disbelieved the evidence and having acquitted the Appellant for offence under Section 306 of IPC on the same set of facts and evidence, cannot convict the Appellant for the offence under Section 498A of IPC that too in respect of the alleged harassment said to have been made several years earlier, especially when the evidence of the witnesses lacks credence and no other independent witness had been examined to speak about the alleged harassment.
11. On the other hand, the learned Additional Public Prosecutor would submit that PW.10 is none other than the daughter of the deceased and she had vividly spoken about the cruelty and harassment meted out to her mother and it was a continuing cruelty and thereby the Trial Court, finding materials available for the offence under Section 498A of IPC, had rightly convicted the appellant/ accused.
12. I have given my careful and anxious consideration to the rival contentions put forward by the learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

- 13.PW.1 is a women servant maid, working in the house of the deceased and the appellant/accused. PW.2 is the sister of the deceased. PW.3 is the witness for the observation mahazar, Ex.P1 and the recovery mahazar, Ex.P2, pursuant to which later Ex.P3 was seized and he had attested Ex.P1 and Ex.P2.
- 14.PW.4 is an independent witness. PW.5 is the hand writing expert. Through PW.5, Ex.P4 to Ex.P9 were marked. PW.6 is an independent witness examined in respect of the recovery mahazar, Ex.P10. PW.7 is a forensic expert, who had conducted test regarding viscera of the deceased and filed the report. PW.8, Head Clerk of the Trial Court had deposed with regard to sending the material objects for chemical analysis, through requestion letters, Ex.P12 and Ex.P13.
- 15.PW.9 is the father of the deceased and he had given the complaint , Ex.P14. PW.10 is the daughter of the deceased as well as the appellant /accused. PW.15 is the Doctor, who conducted the autopsy on the body of the deceased and prepared the post-mortem report Ex.P15. PW.12 is the Head Constable, who had identified the body of the deceased to the Doctor, who had conducted the post-mortem and after competition of the post mortem, handed over the body of the deceased to the relatives.
- 16.PW.13 is an independent witness. PW.14 is the Inspector of Police, who, based on Ex.P14 complaint, had prepared Ex.P16 the printed First Information Report and thereafter, he had gone to the place of occurrence and prepared the rough sketch, Ex.P17 and observation mahazar Ex.P18, through which, MOs.6 to 9 were recovered. Thereafter, after receiving the post-mortem report Ex.P19, altered the case to one under Section 306 as per the alteration report, Ex.P.20. Ex.P21 is the accident register. PW.15 is a relative of the deceased. PW.16 is the Sub Inspector of Police, who had conducted further investigation and filed the final report.
- 17.The case as projected by the Prosecution is that the Appellant/ accused and the deceased, Gunavathy got married in the year 1989 and they were living together at No.48, V.O.C.Nagar, Om Parasakthi Koil Street, Pammal, Chennai. At that time, the accused/appellant is stated to have developed illicit intimacy with PW.1, due to which there was a quarrel between the deceased and the Appellant/ accused. In the meanwhile, the appellant/accused had also got addicted to liquor and had become an alcoholic, due to which, he had been assaulting the deceased and subjecting the victim to cruelty and due to the mental agony, on 11.09.2001, the deceased had self-injected herself with a poisonous drug, due to which, she died.
- 18.On the complaint given by the father of the deceased, PW.9, the case was registered by the Shankar Nagar police station and the complaint was marked as Ex.P14. The evidence of PW.9 has

been corroborated by PW.10, daughter of the deceased and PW.2, sister of the deceased and PW.15, relative of the deceased. Based on Ex.P14, the police had registered the case under Ex.P16 and thereafter he had gone to the place of occurrence and in the presence of the witnesses, PW.3 and PW.4 prepared Ex.P2 observation mahazar and recovered Mos.1 to 5 under recovery mahazar Ex.P2.

19.PW.3 and PW.4 are independent witnesses. They had deposed that Ex.P3 is a suicide note and was recovered in their presence. Thereafter, PW.14, Inspector of Police had conducted inquest in the presence of Panchayathdars and prepared the inquest report, Ex.P19 and thereafter, he had sent the body of the deceased for post-mortem through PW.12.

20.PW.11 is Doctor, who had conducted autopsy and he had, after conducting post-mortem, taken the viscera of the deceased and by requisition letters, Ex.P12 and Ex.P13 had sent the viscera for chemical analysis and based on the report of the chemical analysis, given an opinion, stating that the deceased appeared to have died of cardiac arrest due to taking anaesthetic drug of ketamine and loxapine, a tranquillizer drug, which resulted in cardiac arrest and non functioning of the lungs. The post-mortem was marked as Ex.15. Thereafter, PW.14 the Inspector of Police had altered the case, as per Ex.P20, into one under Section 306 of IPC. The accident register was marked as Ex.P21. On 01.12.1990, the deceased had written a 10 pages letter to the accused and the said letter had been seized little later, through, observation mahazar Ex.P22 and MOs.6 to 9 were recovered under Ex.P16. Thereafter, PW.16, Sub Inspector of Police had examined the witnesses and recorded their statements and based on the statements of the witnesses and documents, had filed the final report against the Appellant/ accused for the offence under Sections 498A and 306 of IPC.

21.Originally the appellant had been charged for the offence under Section 306 of IPC only. The Trial Court having found no material against the the Appellant for having abetted the suicide of the deceased victim, had acquitted the Appellant. While acquitting the Appellant/ accused, the Trial Court had held that the version of PW.2 and PW.9 and PW.10 are exaggerated and the Trial Court has also disbelieved Ex.P4 (which is a letter stated to have been written by the deceased) rendering a finding that it has not been legally proved.

22.Further PW.14 and PW.16, the Investigating Officer have categorically stated that PW.2, PW.9, PW.10 and PW.15 have not spoken about any cruelty being committed on the deceased/victim during the time of investigation and that at the time of recording statements under section 161 Cr.PC.

23.Further, it is the evidence of PW.14 that during his investigation, nothing was spoken by the witnesses about the earlier incident or any previous case having been preferred

against the Appellant/ accused either by the victim or by PW.9, father and thereby it belies the statements of PW.2, PW.9 and PW.10 with regard to the earlier incidents wherein the Appellant/ accused was stated to have committed cruelty on the deceased victim.

24. In 2010 1 LW(Crl) 1299 (Selvarasu and others Vs. State of Tamil Nadu), in paragraph 9, it was held thus:-

"9. Now coming to the evidence of PW2, who is none else than the mother of the deceased, she has come forward with the exaggerated version and she went to the extent of stating that A1 and A2 had committed murder of the deceased for which there is not an iota of material available on record. It is to be stated that PW2 has come forward with new allegations which were not spoken by PW1. It is pertinent to note that PW2 herself has categorically admitted in her cross examination that all her present version to the effect of ill-treatment and cruel treatment said to have been caused by A1 & A2 has not been stated during the course of investigation to PW14, the Investigating Officer. PW14 also categorically admitted in his cross examination that PW2 has not stated during the course of his investigation about A1 to A4 said to have poured kerosene and set fire on the deceased. PW14 also admitted in his cross examination that PW2 has not stated about the demand of household articles namely bureau, cot etc., made by the accused. Again, PW14 also admitted in his cross examination that PW2 has not stated about the alleged demand of Rs.2,00,000/- for A1 going to Singapore. Therefore, it is crystal clear that PW2 has come forward with the developed and exaggerated version only for the first time before the Court. Therefore, this Court is of the considered view that the evidence of PW2 not at all inspires the confidence of this Court and as such her evidence is unbelievable and unreliable."

25. In the decision of the Honourable Supreme Court reported in 2010 13 SCC 657 (Sunil Kumar Sabhudayal Gupta and others Vs. State of Maharashtra), wherein in paragraph 33, it was held thus:-

"33. In case, the complainant in the FIR or the witness in his statement under Section 161 CrPC, has not disclosed certain facts but meets the prosecution case first time before the court, such version lacks credence and is liable to be discarded"

26. While analysing the entire evidence in the light of the decisions cited supra, it is seen that the witnesses have

spoken about the cruelty and harassment for the first time in the Court and nothing had been spoken to by them to the Investigating Officers, PW.14 and PW.16. In the opinion of this Court, the evidence of the witness nothing but an exaggerated one, which lacks credence and does not inspire confidence. In such view of the matter, this Court is of the opinion that the Trial Court erred in convicting the appellant/accused, based on the evidence, which lacks credence and does not inspire confidence. Consequently, the impugned judgement of conviction and sentence is liable to be set aside.

27. 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.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To:

1. The Sessions Judge,
Mahila Court,
Chengalpattu.
2. The Public Prosecutor,
High Court, Madras.
3. The Section Officer,
Criminal Section,
High Court, Madras.
4. The Inspector of Police,
Sankar Nagar Police Station,
Pammal, Chennai.

+1cc to Mr. Rajnish Pathiyil, Advocate Sr.56411

Cr1.A.No.478 of 2010

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srg 17/09/2019