

BAIL SLIP

The Appellants/Accused No.1 to 3 namely

- 1.Mariammal
- 2.Vijaya
- 3.Bairavi

was directed to be released on bail vide order dated 13.03.2012 made in CrI.Mp.No. 1/12 in C.A.No. 189/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.10.2019

PRONOUNCED ON : 22.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.189 of 2012

- 1.Mariammal W/o.Pazhaniyandi
- 2.Vijaya, W/o.Chandran
- 3.Bairavi, W/o. Adhimoolam ... Appellants/Accused 1 to 3

Vs.

The State
Rep. by Inspector of Police,
Thittakudi Police Station,
Cuddalore.
(Crime No.6 of 2009)

... Respondent/
Complainant

Criminal Appeal filed under Section 374 Cr.P.C., to set aside the judgment and order dated 27.02.2012 passed by the Principal Sessions Court (Mahila Court), Cuddalore in S.C.No.286 of 2010.

For Appellants : Ms.AL.Ganthimathi

For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 27.02.2012 passed by the Sessions Court (Mahila Court), Cuddalore in S.C.No.286 of 2010.

2.The facts of the case are within a brief compass.

2.1.Lakshmi (P.W.1) is the younger sister of

Periyasamy (P.W.5) and mother of the deceased Divyapriya. Lakshmi's (P.W.1's) husband Raju was working in the Middle East. Lakshmi's (P.W.1's) house was located in a lane and Mariammal (A1), Vijaya (A2) and Bairavi (A3) were her neighbours. Lakshmi (P.W.1) was having serious disputes with the accused, since the drain water from the house of the accused were stagnating around her house and causing inconvenience to her. Periyasamy (P.W.5), his wife Lakshmi (P.W.3) and their son Manikandan came to Lakshmi's (P.W.1's) house for Pongal and were staying with her. On 17.01.2009, a quarrel ensued between the family members of Lakshmi (P.W.1) and the family members of the accused, in connection with the stagnation of drain water, which escalated into a fight, resulting in injuries to Manikandan, S/o.Periyasamy (P.W.5) and Rajendran, husband of Amudha. The injured were taken to the hospital and police complaints were lodged against each other. Manikandan was admitted to the hospital and Lakshmi (P.W.1), Lakshmi (P.W.3) and Periyasamy (P.W.5) were attending Manikandan. While the elders were away, it is alleged that Mariammal (A1), Vijaya (A2) and Bairavi (A3) had abused Divyapriya, who was hardly 15 years old, in vulgar epithets and had driven her to commit suicide by self-immolation around 01.00 p.m. on 17.01.2009. Divyapriya was rushed to the Government Hospital, Thittakudi, where she was examined by Dr.Rajendran (P.W.7), at around 02.20 p.m. She was found with 95% burns and was admitted to the burns ward, where she died at 03.00 p.m.

2.2.On the written complaint (Ex.P1) given by Lakshmi (P.W.1), Ravichandran (P.W.8), Sub Inspector of Police registered a case in Crime No.6 of 2009 under Section 306 IPC and prepared the printed F.I.R. (Ex.P6). Investigation of the case was taken over by Isaiazhagan (P.W.9), Inspector of Police, Thittakudi police station, who went to the place of occurrence and prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P7). From the place of occurrence, he seized a can of kerosene (M.O.1) and a burnt nighty (M.O.2) under mahazar (Ex.P3). Inquest was conducted over the body of the deceased and the inquest report was marked as Ex.P8. Dr.Rajendran (P.W.7) performed autopsy on the body of the deceased Divyapriya and in his evidence as well in the post-mortem certificate (Ex.P5), he has opined as follows :

"Cause of Death : The deceased would appear to have died of primary shock. (Neurogenic Shock)"

After examining witnesses and obtaining various reports, Ramdoss (P.W.10), who succeeded Isaiazhagan (P.W.9), completed the investigation and filed a final report in P.R.C.No.8 of 2010 before the District Munsif-cum-Judicial Magistrate, Thittakudi under Section 306 IPC against Mariammal (A1), Vijaya (A2) and Bairavi (A3).

2.3 On

appearance of the accused, the provisions of

Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.286 of 2010 and was made over to the Mahila Court, Cuddalore for trial. The trial Court framed a charge under Section 306 IPC against the accused and when questioned, they pleaded "not guilty".

2.4.To prove the case, the prosecution examined 10 witnesses and marked 8 exhibits and 2 material objects. In the cross-examination of the prosecution witnesses, the defence marked the certified copy of the F.I.R. in Crime No.4 of 2009 as Ex.D1. When the accused were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the same. No witness was examined on the side of the accused.

2.5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 27.02.2012 in S.C.No.286 of 2010, convicted the accused under Section 306 IPC and sentenced them to undergo simple imprisonment for two years and further directed to pay a sum of Rs.1,000/- as fine, in default to undergo simple imprisonment for a further period of 15 days. Challenging the conviction and sentence, the accused have filed the present appeal.

3.Heard Ms.AL.Ganthimathi, learned counsel for the appellants/ accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4.Ms.AL.Ganthimathi submitted that there are contradictions galore in the evidence of the prosecution witnesses and there is no satisfactorily material to show that the accused had instigated the deceased to commit suicide. She submitted that in the complaint Ex.P1, Lakshmi (P.W.1) has stated that Rajendran, Shanmugam and Amudha had picked up a quarrel with her brother Periyasamy (P.W.5) around 07.00 a.m. on 17.01.2009, whereas, in her evidence, she has implicated Mariammal (A1), Vijaya (A2) and Bairavi (A3) in that incident. She further contended that Lakshmi (P.W.1), in her cross-examination, has clearly stated that after her daughter committed self-immolation, she became giddy and fainted and regained consciousness only in the evening around 08.00 p.m. Therefore, her evidence that her daughter told her the reason for committing suicide, cannot be true.

5.Per contra, learned Government Advocate refuted the contentions.

6.This Court gave its anxious consideration to the rival submissions.

7.The fact that there was a dispute between Lakshmi (P.W.1) and the accused with regard to the lane, has not been denied by the defence. In fact, even in the cross-examination of the prosecution witnesses, the dispute between Lakshmi (P.W.1) and the accused with regard to the stagnation of water in the lane, has been vividly elicited. The further fact that

on 17.01.2009, around 07.00 a.m., a fight ensued between both sides, has also been established via the evidence of P.W.1 to P.W.5 and the defence has marked the F.I.R. in Crime No.4 of 2009 as Ex.D1 in the cross-examination of Ravichandran (P.W.8), the Sub Inspector of Police. The F.I.R. in Crime No.4 of 2009 vide Ex.D1 has been lodged by Mani, S/o.Mariamammal (who is A1 in this case) against Periyasamy (who is P.W.5 in this case), his son Manikandan, Naga and Raj for the offences under Sections 294(b), 323, 324 and 506(II) IPC.

8. Even in the complaint, which formed the basis of the registration of the F.I.R. in Crime No.4 of 2009, it is clearly stated that on account of the lane dispute between Lakshmi (P.W.1) and the family of the accused herein, an altercation ensued at 07.00 a.m. on 17.01.2009, in which, Manikandan had assaulted Rajendran. However, it is the case of Lakshmi (P.W.1) and Periyasamy (P.W.5), that they were attacked by Rajendran and group, in which, Periyasamy's son Manikandan suffered injuries. Thus, the prosecution has proved beyond a peradventure that on 17.01.2009, at 07.00 a.m., a fight ensued with regard to the stagnation of water in the lane joining the house of both sides, resulting in injuries to both sides. While Lakshmi (P.W.1) and her sister-in-law Lakshmi (P.W.3) were shuttling between hospital and home to take care of Manikandan, Divyapriya and her younger sibling Manikandan (P.W.2) were at home and they faced the vulgar verbal assault mounted by the accused. Even if this Court keeps aside the evidence of Lakshmi (P.W.1) and her sister-in-law Lakshmi (P.W.3), the evidence of Manikandan (P.W.2) and their neighbour Suguna (P.W.4), are perspicuous.

9. Manikandan (P.W.2) was examined on 17.12.2011, when he was 17 years old. On 17.01.2009, he must have been 15 years old. Manikandan (P.W.2), has stated that he knows the accused; there is a lane that runs beside his house and the house of the accused, in which, drainage water from the house of the accused would stagnate, due to which, there used to be frequent quarrels; on 17.01.2009, his uncle, aunt and their son were there in his house; they had come for celebrating Pongal and at that time, his mother was discussing with his uncle, the ways and means to prevent stagnation of water and his uncle suggested that they build a wall to prevent it; seeing them discussing, all the three accused along with Rajendran came there and called his mother a whore; a quarrel ensued in which, Rajendran came to attack his uncle and at that time, his uncle's son intervened and suffered a blow on his head, therefore, he was carried to the Government Hospital, Thittakudi by his mother, uncle and aunt; when they were away, he was alone with his sister Divyapriya; at that time, all the three accused abused his sister, saying that she is plumply and beautiful and would make a good whore; around 11.00 a.m., his mother and aunt returned home from the hospital, in order to take back food and clothes for his uncle and his son, who were in the hospital; at that time, his aunt questioned the accused, as to why they abused the children,

for which, the accused once again said that the daughter and mother are whores; his mother and aunt left for the hospital and even thereafter, the accused continued to berate them in vulgar words touching upon the morality of his sister; on hearing this, his sister went inside the house, poured kerosene on herself and set fire; she came out of the house hollering and on seeing her, neighbours rushed; his mother and aunt returned home and his sister was sent to the hospital by an ambulance, where, she died.

10.The defence was not able to make any dent in the evidence of Manikandan (P.W.2), except suggesting that Divyapriya had committed suicide due to family problems, which suggestion, he denied.

11.Ms.AL.Ganthimathi submitted that there are some improvements in the evidence of Manikandan (P.W.2), qua his previous statement under Section 161(3) Cr.P.C. and therefore, his evidence should not be relied upon. A witness is not expected to repeat the statement recorded under Section 161 Cr.P.C. like a parrot or a robot. There are bound to be some embellishments because, witnesses are not recording machines.

12.The evidence of Manikandan (P.W.2) stands adequately supported by the evidence of Suguna (P.W.4), a neighbour. Suguna (P.W.4), has stated in her evidence that on 17.01.2009, a dispute had occurred in the house of Lakshmi (P.W.1); she went to the hospital to see the injured and returned around 12.30 in the noon; at that time, she saw the three accused vulgarly abusing Divyapriya and calling her a whore and exhorting her to follow her mother's footsteps. In the cross-examination, this witness (Suguna-P.W.4) has stated that it was Bairavi (A3), who said that she will set up persons to undress her (Divyapriya) publicly, when she goes to college. Thus, the evidence on record clearly shows that after the quarrel that ensued at 07.00 a.m. on 17.01.2009, the womenfolk viz. Mariammal (A1), Vijaya (A2) and Bairavi (A3) had harassed Divyapriya, a 15 year old girl to such an extent that, unable to bear the torture and vulgar words used by the accused, she was pushed to the wall culminating in she committing self-immolation due to frustration.

13.The fact that Divyapriya died of self-immolation, has been proved beyond cavil via the evidence of Lakshmi (P.W.1), Manikandan (P.W.2), Lakshmi (P.W.3) and Suguna (P.W.4) and Dr.Rajendran (P.W.7). Of course, the defence has also not disputed this fact. It is their contention that she committed self-immolation due to domestic problems. It is neither the defence case that Divyapriya had a natural death nor is it their case that her death was homicidal. In Ude Singh and Others Vs. State of Haryana [2019 (9) SCALE 831 : 2019 SCC Online SC 924], the Supreme Court has held thus,

<https://hcservices.ecourts.gov.in/hcservices/> "16.1 ... But, on the other hand, if the

appellant by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. ... "

The facts obtaining in the case at hand do pass muster the law laid down by the Supreme Court in Ude Singh supra.

In the result, this criminal appeal is dismissed as being devoid of merits. The trial Court is directed to secure the accused and commit them to prison for undergoing the remaining period of sentence, if any. Registry is directed to transmit the original records to the trial Court forthwith.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Judge, (Mahila Court),
Cuddalore.

2.The Inspector of Police,
Thittakudi Police Station,
Cuddalore.

3.The Public Prosecutor,
High Court, Madras.

4.The Deputy Registrar,
Criminal Side,
High Court, Madras.

5.The District Munsif cum Judicial Magistrate,
Thittakudi, Cuddalore District.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.A.L.Gandhimathi, Advocate, S.R.No. 88808

CRL.A.No.189 of 2012