

Bail Slip

The Appellant namely Ramkumar S/o. Rajendiran, accused in S.C.No.1 of 12 dated 14.06.2012 on the file of the Additional Sessions Judge, Karaikal was directed to be released on 04/01/2012 MP No. 1 of 12 in CrI A.No.357 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.02.2019	Pronounced on: 14.02.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.357 of 2012

Ram Kumar,
S/o.Rajendiran,
Mariammal Koil Street,
Santhamangalam Post,
Chidambaram.

... Appellant/Accused

/versus/

State by
The Inspector of Police,
Nedungadu Town Police Station,
Karaikal.
(Crime No.107 of 2008)

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 (2) of the Code of Criminal Procedure Code, against the Judgment dated 14.06.2012 in S.C.No.1 of 2012 passed by the Hon'ble the Additional Sessions Judge, Karaikal seeking to set aside the conviction and sentence imposed on the appellant/accused.

For Appellant : Mr.K.Balakrishnan

For Respondent : Mr.V.Balamurugane
Additional Public Prosecutor (Pondy)

J U D G M E N T

The Appellant is the sole accused in C.C.No.1 of 2012 on the file of Learned Additional Sessions Judge, Karaikal. The Appellant was charged for offence under Section 306 of I.P.C. After trial, he was found guilty and he was convicted and sentenced to undergo 2 years R.I and fine of Rs.2,000/- in default to undergo 1 month S.I.

2. The brief facts of the prosecution case is that on 01.10.2008 at about 10.00hrs the Sub-Inspector of Police, Nedungadu Police Station received an intimation from the Government General Hospital, Karaikal that Prema, W/o. Ram Kumar has been admitted for treatment of burn injury. Pursuant to the intimation he went to hospital and recorded the statement of Prema. She informed the police that on 01.10.2008 around 9.30 hours while she was filling the stove with Kerosene, accidentally kerosene spill over the floor. She left the kerosene container open and tried to lit the stove. The burnt match stick fell on the floor the spilled kerosene caught fire and her cloth caught fire. Hearing her alarm, her husband came to her rescue. He put off the fire and took her to Primary Health Centre, Nedungadu. On their reference, she was taken to Government Hospital, Karaikal. With this information, the Sub-Inspector of Police registered First Information Report and requested the Magistrate to record the dying declaration of the victim who visited the hospital and recorded dying declaration. Initially, the police thought that it is an accidental fire. Later, the brother of the victim Sampath Kumar informed the police that victim Prema wants to give further statement about the incident. Accordingly, the Station House Officer went to the G.H, Karaikal on 02.10.2008 at about 22.45 hours. The further statement of the victim Prema was recorded in the presence of Doctor. The Station House Officer came to know from Prema that her husband Mr. Ram Kumar was demanding the balance Jewels promised by her Father and abused Prema. When Prema threatened to commit suicide, Mr. Ram Kumar offered kerosene to her and asked her to demolish herself.

3. Based on the further statement recorded on 02.10.2008, the case under crime No.107 of 2008 under Section 309 I.P.C was registered and matter was taken up for further investigation. On 05.10.2008, at about 2.45 hours Perma succumb to burn injury. Since the marriage between Prema and Ram Kumar took place hardly 19 days prior to the incident, the Deputy Collector (Revenue), Karaikal was asked to conduct preliminary enquiry on the death of victim Prema through an Executive Magistrate. The enquiry conducted by Deputy Tahsildar concluded that there was no cruelty or dowry harassment. Whereas the inquest conducted by police indicated that Prema committed suicide due to dowry harassment.

4. To prove the case, the prosecution has examined 12 witnesses, 18 Exhibits and 4 material objects were marked in support of the prosecution.

5. The trial Court held the prosecution has proved the charge level against the accused beyond reasonable doubt. The deceased Prema who died within 7 years of her marriage was abated to commit suicide by the accused. The accused was

sentenced to undergo 2 years R.I and a fine of Rs.2,000/- in default to undergo 1 month S.I.

6. On appeal, the learned counsel appearing for the appellant/accused would submit that the trial Court miserably failed to consider and appreciate the evidence in the proper perspective. The sequence of event, even according to the prosecution would clearly show that the facts has been distorted after the visit of P.Sampath Kumar [PW.8] to the hospital. Till then, the victim who had spoken the truth to the doctor (PW.7) and the Magistrate (PW.9) who has recorded the dying declaration has subsequently given a different vision in her further statement. The victim who had suffered 90% burn all over her body, surprisingly had fixed her signature in the 2nd statement purportedly recorded by the police on 02.10.2008 at 23.45 hours. The statement of the victim to the doctor and to the Magistrate besides the enquiry report of the Revenue Authority, Deputy Tahsildar clearly proves the innocence of the accused. Whereas, the distortion of fact by the prosecution after PW.8 visit implicates the accused. The inquest report purportedly to have been recorded by the I.O is not supported by any witnesses to the inquest report. Therefore, the learned counsel appearing for the appellant would submit that the trial Court ought not to have relied upon the evidence of Sampath Kumar [PW.8] who was instrumental for the distortion of fact and the diversion of investigation.

7. The learned Counsel submitted that the learned Additional Sessions Judge, Karaikal, failed to accept the dying declaration given by the victim on 01.10.2008 before the Learned Magistrate. The statement recorded by the Magistrate will prevail over the statement recorded by the police. Whereas, the Court below has ignored the earliest statement recorded by the Judicial Magistrate and accepted the subsequent statement recorded by the police, after the victim been tutored by her relatives.

8. Per contra, the Learned Additional Public Prosecutor (Pondicherry) would submit that victim Perma who got married on 11.09.2008 was admitted in the hospital with 90% burn injury on 01.10.2008. Initially the victim gave a statement that she sustained burnt injury by accidental fire. Later he has come out with the true vision on next day. Both her statements were placed by the prosecution for proper appreciation.

9. The learned Judicial Magistrate was asked to record the further statement of the accused but refused the request and same form part and parcel of the record. Hence, the 1st dying declaration ought to be rejected. The trial Court has clearly relied upon the 2nd dying declaration which was given by the victim in the presence of doctor, who has also certified about

her stable and fit, state of mind. While the 1st dying declaration contain only the thumb impression of the victim, the 2nd dying declaration contains the signature of the victim, which gives more authenticity to the content. Hence, prayed that the Appeal deserves to be dismissed.

10. Admittedly, there is no eye witness to the occurrence. The intimation of the accident to the police issued by the Government General Hospital, Karaikal is the 1st document prepared in the normal course of the event. This report is marked as Ex.P.6. From this document, we find that the patient Prema was brought to the hospital with burn injuries by her husband alleged to have met with fire accident as the Kerosene stove was blasted, when she was working on the stove. This intimation has been sent to the police at 10.00 am on 01.10.2008. The Station House Officer who has received this intimation has gone to the hospital and to the place of occurrence. He has enquired the neighbourhood and collected information during his enquiry. With the said information, he has requested the Judicial Magistrate No.2, Karaikal to record the dying declaration, his request is marked as Ex.P.7. In the said request letter, the Station House Officer has specifically recorded that on receiving the intimation from Doctor Parthiban Vijayan (PW.7) from Government General Hospital, Karaikal, he visited the place of occurrence and enquired the neighbours. He has also enquired the patient Perma at General Hospital, Karaikal. She has stated that it was by accident, she caught fire. On the request from the Station House Officer, the Judicial Magistrate has visited the hospital at 6.00pm on 01.10.2008. The Doctor has certified that the patient is fully conscious well oriented and able to give statement. Thereafter, the statement of the victim has been recorded by the Learned Magistrate and her thumb impression has been obtained in the statement. The victim has explained in her statement how the accident occurred. The dying declaration recorded by the Magistrate is marked as Ex.P.8. The very same Station House Office has again, on 03.10.2008 has requested the Magistrate to record the statement of the victim Perma for the 2nd time. This is due to the further statement recorded by the Station House Officer at the instance of PW.8. The Learned Magistrate, on receipt of this requisition letter has rightly refused to record the dying declaration for the 2nd time. Therefore, with the further statement of the victim recorded by the police which is marked as Ex.P.11 and the inquest report conducted by the I.O the prosecution has proceeded on the lines that the victim Prema has committed suicide due to the abatement of her husband.

11. The inquest report which is marked as Ex.P.13 indicates that 5 persons were present during the inquest. While, three of them has stated that Prema committed suicide due to dowry harassment. Two of the witnesses has stated that she

committed suicide due to domestic quarrel. Out of 12 witnesses examined by the prosecution, PW.1 (P.Nagakanni) is the mother of the victim girl, PW.2 (D.Aruldoss) is the signatory to rough sketch and observation mahazar. He has turned hostile, PW.3 (A.Pitchaikaran) is the father of the victim. PW.3 in his evidence has stated that he and his wife Nagakanni (PW.1) went to the hospital after receiving telephone calls from the neighbours. When he met her daughter in the hospital, she told him that the accused drowed her with Kerosene and set her on fire. Thereafter, he ran away from the house. This part of the PW.3 statement cannot be trusted for the simple reason that it is a proven fact that the accused put off the fire on the victim and took her to the hospital. The earliest document which is the intimation of the doctor at the hospital proves this fact. Therefore, PW.1 and PW.2 who were nowhere near the scene of occurrence has come out with their own imaginary vision of the incident to implicate the accused as if, they heard from their daughter that she was subjected to cruelty and abated by the accused to commit suicide.

12. The embellishment and exaggeration in the prosecution case could be seen from the gradual distortion of fact adduced by the prosecution witnesses PW.1 (P.Nagakanni), PW.3 (A.Pitchaikaran) and PW.8 (P.Sampath Kumar) who are none other than the mother, father and brother of the victim. The explanation offered by the prosecution for the victim to give the 2nd dying declaration which is quite contrary to the 1st dying declaration appears to be very very novice and artificial. When at the first instance, the victim has come out with a vision of accidental fire. All of the sudden, after the visit of her brother to the hospital has turned topsy-turvy to come out with a new theory of dowry harassment.

13. Whether this statement was a voluntary statement emanated from the mouth of the victim or a created statement by external agency has to be tested from the manner the statement was recorded. A patient with 90% burn injury while examining on the date of accident was found fully conscious but not in a position to affix her signature, due to extensive burn injury. Whether the same person had affixed her signature two days later. When the fact remains that her health was getting deteriorated and lost breath on 05.10.2008, the probability of victim affixing her signature in the dying declaration is doubtful.

14. In this regard, the evidence of Parthiba Vijayan (PW.7) who first saw the victim in the hospital and recorded the accident register is very relevant. The intimation sent by him to the police which is marked as Ex.P.6 has already been discussed. It contains the statement of the victim who has spoken about how she sustained the injury. To the doctor, she

has clearly said it was due to accident. PW.7 evidence stands not only un-impeached also fully supported by the dying declaration recorded by the Magistrate, which is marked as Ex.P.8.

15. If one look at the post-mortem report, we find that except portion of scalp, face, palm, soul and infraumbilical region, superficial external burn seen all over the body and it has been found infected. The post-mortem doctor has also opined that death was due to septicemia complications of burn sustained. Since, the portion of the scalp, face, palm and soul alone were left un-burn, the 1st dying declaration of the victim that she accidentally caught fire due to the spilled over kerosene, while attending the kerosene stove is more probable than the vision of the prosecution that the accused offered kerosene to the victim and abated her to pour it on herself and lit the fire.

16. The Court below for the reason best known has accepted the improbable vision of the prosecution which has been created after the intervention of some vested interest and erred in ignoring the contemporaneous document which has recorded the facts without any distortion.

17. For the said reason, this Court finds that the conviction and sentence imposed on the appellant by the trial Court is totally erroneous and liable to be set aside. Accordingly, the Criminal Appeal is Allowed. The conviction and sentence passed by the trial Court is set aside. Fine amount paid if any, shall be refunded to the appellant. Bail bond executed shall stand discharged.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bsm

To,

- 1.The Additional Sessions Judge,
Karaikal.
- 2.The Public Prosecutor (Pondy),
High Court, Madras.
- 3.The Inspector of Police,
Nedungadu Town Police Station,
Karaikal.

4.The Judicial Magistrate No.II,
Karaikal.

5.The Chief Judicial Magistrate,
Pondicherry.

+1cc to the Public Prosecutor(Pondicherry), S.R.No.13816

+1cc to Mr.K.Balakrishnan, Advocate, S.R.No.14268

Criminal Appeal No.357 of 2012

SSI (CO)

rrs 13/03/2019



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