



WEB COPY

Bail Slip

That the Appellant/Accused namely C.Sait Prabhu S/o.Chinnasamy was released on bail as per order of this court dated 19.11.2012 in MP.No.1/12 in Crl.A.NO.747/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.747 of 2012

C.Sait Prabhu

.. Appellant/
Accused

Vs.

State by
Inspector of Police
E3 Teynampet Police Station
Chennai

.. Respondent/
Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and order dated 01.06.2012 passed by the Sessions Judge (Mahila Court), Chennai in S.C.No.243 of 2009.

For Appellant : Mr.S.Xavier Felix

For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 01.06.2012 passed by the Sessions Court (Mahila Court), Chennai in S.C.No.243 of 2009.

2.The facts in brief giving rise to the instant criminal appeal are as under :

2.1.The deceased Meera and the accused were in love and they got married, eight years prior to the date of incident (26.12.2008) and they had two children viz. Jayakumar (son, aged 6 years) and Indumathi (daughter, aged 3 years). At the time of



the incident, Meera was nine months pregnant.

2.2.It is alleged that the appellant would come drunk everyday, suspect Meera's fidelity and beat her mercilessly. Unable to withstand it, she committed self-immolation, by dousing with kerosene on 26.12.2008 around 09.30 p.m. in her matrimonial home. The appellant put off the fire and carried her to the Kilpauk Medical College & Hospital, Chennai, where she was examined by Dr.Rajasekaran (P.W.7), who found her with 84% burns and admitted her into the burns ward. The copy of the accident register was marked as Ex.P5.

2.3.Intimation was sent to the police and K.Ayyampillai (P.W.10), Sub Inspector of Police, came to the hospital and recorded the statement (Ex.P11) given by Meera, based on which, he registered a case in Crime No.2524 of 2008 under Section 309 IPC on 27.12.2008 at 00.30 hours and prepared the printed F.I.R. (Ex.P12).

2.4.On the request of the police, Mrs.Indirani (P.W.8), XII Metropolitan Magistrate, Chennai came to the hospital and recorded the dying declaration of Meera, in the presence of Dr.Jayakumar (P.W.9) and the dying declaration was marked as Ex.P7. Meera succumbed to the injuries on 27.12.2008 at 06.30 p.m. and the death report was issued by Dr.K.Subramaniyan (P.W.3) and was marked as Ex.P2.

2.5.Investigation of the case was taken over by Ramalingam (P.W.12), Inspector of Police, who went to the place of occurrence and prepared observation mahazar (Ex.P3), rough sketch (Ex.P14) and seized a white colour plastic kerosene can (M.O.1) and a matchbox (M.O.2) under cover of Mahazar (Ex.P4), in the presence of witnesses viz. Maduram (P.W.6) and Perumal (not examined). Pursuant to the death of Meera, the police altered the case into one under Section 498-A and Section 306 IPC vide alteration report (Ex.P17).

2.6.Ramalingam (P.W.12) conducted inquest over the body of the deceased and the inquest report was marked as Ex.P15. The body was sent for post-mortem, where, Dr.K.Subramaniyan (P.W.3) performed autopsy and issued post-mortem certificate (Ex.P1). Dr.K.Subramaniyan (P.W.3), in his evidence as well in the post-mortem certificate (Ex.P1), has stated that, the uterus was found enlarged with a dead male baby measuring 48 cms length. He has also noted that the deceased had 84% burns over her body. He opined that the deceased would appear to have died of extensive burns and hypovolemic shock.



2.7.After recording the statement of witnesses and collecting various reports, the police completed the investigation and filed final report in P.R.C.No.77 of 2009 before the XVIII Metropolitan Magistrate, Chennai.

2.8.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.243 of 2009 and was made over to the Mahila Court, Chennai, for trial. The trial Court framed charges under Sections 498-A and 306 IPC against the accused. When questioned, the accused pleaded "not guilty".

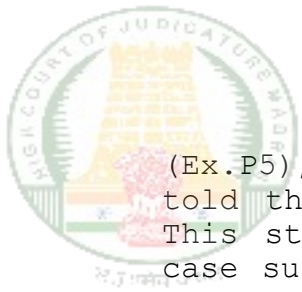
2.9.To prove the case, the prosecution examined 12 witnesses and marked 17 exhibits and two material objects viz. M.O.1 and M.O.2. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same, but, did not offer any plausible explanation for the suicide of his wife Meera. No witness was examined on the side of the accused nor any document marked.

2.10.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 01.06.2012 in S.C.No.243 of 2009, convicted and sentenced the accused as under :

Provision under which convicted	Sentence
Section 498-A IPC	3 years rigorous imprisonment and fine of Rs.500/-, in default to undergo 1 month simple imprisonment
Section 306 IPC	10 years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo 3 months simple imprisonment

The aforesaid sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentence, the accused have filed the present appeal.

3.Heard Mr.S.Xavier Felix, learned counsel for the appellant and Mr.R.Suryaprakash, learned Government Advocate appearing for the respondent State.



(Ex.P5), it is recorded that Meera was conscious and that, she told the doctor that she suffered the burns in a stove blast. This statement of Meera, by itself cannot make the prosecution case suspect because, the appellant was next to Meera, when she was examined by Dr.Rajasekaran (P.W.7). Whereas, when the dying declaration was recorded by the Magistrate, there was no one around. We cannot attach much importance to such a solitary statement recorded in the accident register because, Meera would not have had the courage to implicate her husband to the doctor in his presence. In this context, it is profitable to refer to the judgment of the Supreme Court in P.Babu and others Vs. State of Andhra Pradesh 1994 SCC (Crl.) 424, wherein, it was held as follows :

"6. It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc. "

11. In this case, there are two dying declarations viz. one given to Ramalingam (P.W.12), Sub Inspector of Police, which has been marked as Ex.P11 and the other given to Mrs.Indirani (P.W.8), XII Metropolitan Magistrate, which has been marked as Ex.P7. Ex.P11 (statement given by Meera to the police) is earlier, in point of time. In the dying declaration (Ex.P11), Meera has stated as follows :

"Ours was a love marriage. My husband is a distant relative of mine. We have two children, a son Jayakumar, aged 6 years and a daughter Indumathi, aged 3 years. Now, I am 9 months pregnant. My husband is a van driver. We are Dalits. My husband would come drunk frequently, suspect my fidelity and beat me. Today, 26.12.2008, he came home drunk around 09.30 p.m. and quarrelled with me. I was very patient. He started torturing me more. Unable to withstand the torture, I poured kerosene on myself and set fire. Unable to bear the pain, I started hollering. My husband held my hand and doused the fire. He also suffered injuries on his hands. My junior paternal uncle and my husband took me to the Kilpauk Medical College & Hospital."



12. In the dying declaration (Ex.P7) that was recorded by Indirani (P.W.8), XII Metropolitan Magistrate, Meera has stated as follows :

"Yesterday, around 9'o clock, as usual, my husband came home drunk and picked up quarrel with me. Because of that, I poured kerosene on myself. At that time, my husband gave me a matchbox and said me, "yes, you light yourself". Out of frustration, I set fire to myself. I am 9 months pregnant. I have a 6 year old son Jayakumar and a five year old daughter Indumathi."

Beneath Ex.P10, Dr.Jayakumar (P.W.9) has made the following endorsement :

"Patient is conscious in a fit state of mind while and after recording statement. Both hands are burnt."

13. As contended by Mr.Xavier Felix, it is true that, in the statement (Ex.P11) given to the police, Meera had not stated that the appellant gave her the matchbox and asked her to light herself. This one improvement in the statement (Ex.P7) given to the Magistrate, cannot entirely impeach the credibility of the two dying declarations. In both the dying declarations, Meera has stated that her husband would come drunk, suspect her fidelity and beat her. Even on the fateful day, the appellant had come drunk and beaten her and this had impelled her to end her life. Meera was aware that she was having a 9 month old child in her womb, despite which, she had committed self-immolation. This only shows her desperation and that, she was pushed to the wall. Therefore, there are sufficient materials to hold that the suicide was triggered by the continuous cruelty that was meted out to Meera. The last straw on the camel's back was the quarrel that ensued on 26.12.2008.

14. Mr.Xavier Felix placed strong reliance on the judgment of the Supreme Court in Surinder Kumar Vs. State of Haryana [(2011) 10 SCC 173], wherein, the law of dying declaration has been vividly discussed and submitted that, when there are inconsistent versions between two dying declarations, the benefit of the same should accrue to the accused, in the absence of corroboration.

15. As alluded to above, this Court does not find any discrepancy or contradiction in the two dying declarations viz. Ex.P7 and Ex.P11. In both the dying declarations, she has



stated that, even on the fateful day, the appellant had come drunk and quarrelled with her. Unable to withstand the torture, she decided to take the extreme step. Just because, in the latter dying declaration (Ex.P7) given to the Magistrate, Meera had stated that her husband had given the matchbox to her and had exhorted her to end her life, both the dying declarations cannot be discarded.

16. Though the presumption under Section 113-A of the Evidence Act cannot arise in this case, yet, the circumstances on record, clearly show that Meera had taken the extreme step, as she was unable to withstand the torture meted out to her. The appellant has not given any other plausible explanation for his wife suicide in the matrimonial home, when he was examined under Section 313 Cr.P.C. As regards the cruelty meted out to Meera, apart from the dying declarations, the evidence of Meera's father Natarajan (P.W.1) and her brother Ambethkumar (P.W.2) also are on the same lines. In fact, Masilamani (P.W.4), a local resident, had stated that Natarajan (P.W.1) informed him about the cruelty meted out to his daughter by the appellant, for which, he and the other elders in the community, held a panchayat and admonished the appellant and advised him to behave properly.

17. In view of the above discussion, this Court holds that the conviction imposed on the appellant by the trial Court for the offence under Section 306 IPC and Section 498-A IPC does not suffer from any infirmity. However, taking into consideration the fact that the appellant would have to take care of his two children, the sentence of rigorous imprisonment imposed by the trial Court is reduced from 10 years to 3 years rigorous imprisonment for the offence under Section 306 IPC. The sentence of fine and the default sentence stands unaltered.

In the result, this appeal is partly allowed. The trial Court is directed to secure the appellant and commit him to prison to undergo the remaining period of sentence, if any. The Registry is directed to transmit the original records to the Court concerned forthwith.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



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To

1.The Sessions Judge,
Mahila Court,
Chennai.

2.The Principal Sessions Judge,
Chennai.

3.The Superintendent,
Central Prison,
Puzhal Chennai.

4.The Inspector of Police
E3 Teynampet Police Station
Chennai

5.The Public Prosecutor
High Court, Madras

copy to:

The Deputy Registrar
Criminal Side
High Court, Madras

+1cc to Mr.S.Xavier Felix, Advocate sr.101499

CRL.A.No.747 of 2012

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