

Bail Slip in Crl.A 46 of 2016

The Appellant/Accused Namely Nagarajan S/o Arusamy was directed to release on bail made in Crl.MP NO.2688/16 in Crl.A 46//16 dated 13/06/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.46 of 2016

Nagarajan Appellant/Accused

Vs.

State represented by its
Inspector of Police,
All Women Police Station,
Perur, Coimbatore. ... Respondent/Complainant
Crime No.22/2012

Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the conviction and sentence imposed by the Sessions Judge, Mahila Court (Magalir Neethimandram), Coimbatore, dated 31.12.2015 in S.C.No.159 of 2013 and to allow the above Criminal Appeal.

For Appellant : Mr.V.V.Sairam

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

J U D G M E N T

This Criminal Appeal has been filed by the appellant/accused against the order of conviction and sentence, passed by the Sessions Judge, Mahila Court (Magalir Neethimandram), Coimbatore, on 31.12.2015 in S.C.No.159 of 2013.

2.The story of the prosecution is as under :

The family of the appellant and the family of the deceased were neighbours in Kondampatti Village, Coimbatore District; the appellant fell in love with the deceased and got married to her, which was not to the liking or interest of both families; after

marriage, the appellant set up a separate matrimonial home with the deceased; they did not have any children; the appellant was addicted to liquor and taunted the deceased frequently for not bringing enough dowry; on 24.07.2012 at 11.00 a.m., when the appellant was at home, the deceased asked him money for getting cooking-gas connection, for which a quarrel ensued; at around 02.00 p.m. on the same day, the appellant poured kerosene on the deceased and threatened her to lock herself inside the room and thereafter, he lighted a match-stick and threw it on her through the window of the room, resulting in she sustaining burn injuries; while the deceased was in the hospital, the Judicial Magistrate (P.W.8) recorded the dying declaration, which was marked as Ex.P6; thereafter, on the statement of the deceased (Ex.P7), the police registered a case in Crime No.22 of 2012 on 25.07.2012 for the offences under Sections 498-A and 307 IPC against the appellant and prepared the printed FIR (Ex.P8); the deceased succumbed to the injuries on 30.07.2012 and thereafter, the case was altered to one under Section 302 IPC.

3.The appellant was arrested on 25.07.2012 at 19.00 hours. Based on the confession statement of the appellant, a kerosene can was recovered from near a water body in the village. Investigation was taken over by Mr.Shanmugam (P.W.11), Deputy Superintendent of Police, who sent a requisition to the Revenue Divisional Officer to conduct inquest, since, the death was within seven years of marriage. Accordingly, Mr.Santhakumar (P.W.6), Revenue Divisional Officer, conducted inquest on 30.07.2012 and submitted an inquest report (Ex.P4), wherein, it is stated that the appellant had quarrelled with the deceased and had thereafter, set her on fire. After examining several witnesses and obtaining various reports, the Investigating Officer completed the investigation and filed final report in P.R.C.No.10 of 2013 before the Judicial Magistrate Court No.I, Coimbatore, for the offences under Sections 498-A, 302 and 506 (ii) IPC against four accused, viz., Nagarajan (A1), the appellant herein, Aruchamy (A2), father of the appellant, Maragatham (A3), mother of the appellant and Pachainayagi (A4), sister of the appellant.

4.On the appearance of A1 to A4, 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.159 of 2013 and was made over to the Sessions Judge, Mahila Court, Coimbatore, for trial. The trial Court framed charges under Section 498-A r/w. 34 IPC against A1 to A4; under Sections 302 and 506(ii) IPC against the appellant (A1). When questioned, the accused pleaded not guilty.

5.To prove the case, the prosecution examined 11 witnesses, marked 15 exhibits and produced one Material Object. When the

accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same. On behalf of the accused, no witness was examined and no exhibit was marked. The appellant gave a written statement under Section 313 Cr.P.C., explaining the circumstances under which the incident had taken place.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment dated 31.12.2015 in S.C.No.159 of 2013, acquitted A2 to A4 of all the charges, but convicted the appellant (A1) and sentenced him as under :

Provision under which convicted	Sentence
498-A IPC	3 years rigorous imprisonment and also to pay a fine of Rs.5,000/- i.d. simple imprisonment for 6 months.
306 IPC	7 years rigorous imprisonment and also to pay a fine of Rs.5,000/- i.d. simple imprisonment for 6 months.

7. Challenging the conviction and sentence, the appellant (A1) is before this Court.

8. Heard Mr.V.V.Sairam, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side), appearing on behalf of the respondent police.

9. At the outset, it may be necessary to state here that the trial Court had framed charges under Section 302 IPC against the appellant, but, the appellant was acquitted of the said charge and was convicted under Section 306 IPC. The issue as to whether a person charged under Section 302 IPC can be convicted of the offence under Section 306 IPC is no more res integra in the light of law laid down by the Hon'ble Supreme Court in Dalbir Singh v. State of Uttar Pradesh [(2004) 5 SCC 334]. However in the said judgment, the Hon'ble Supreme Court has stated that, such a conviction under Section 306 IPC can be given, only where there is material to show that the accused had inflicted cruelty, driving the deceased to commit suicide. In the dying declaration and in the statement to the police, the deceased has stated that the appellant poured kerosene on her and asked her to get into the room and lock herself up and thereafter, threw a lighted match-stick on her through the window of the room, resulting in she suffering burns. The evidence on record shows that, it was the appellant, who had taken the deceased to the hospital, which is apparent vide evidence of Dr.Nirmala (P.W.7) and Accident Register (Ex.P5).

10.Deivanai (P.W.1), mother of the deceased, has stated that, on hearing the news, she rushed to her daughter's house, where, the appellant was present and thereafter, the appellant took her daughter to the hospital. Admittedly, the family of the deceased lived in the same village, where the family of Deivanai (P.W.1) lives and not far away.

11.The evidence of Deivanai (P.W.1), mother of the deceased, Kokila (P.W.2), sister of the deceased, Selvi Soundarya (P.W.3), sister of the deceased, Palanichamy (P.W.4), relative of the deceased are to the effect that the appellant fell in love with the deceased and got married to her and after marriage, they were living separately. They have also stated that the family members had not accepted the marriage and therefore, they were not frequently visiting the house of the deceased and were only speaking to her over phone.

12.Albeit the two dying declarations, one given to the Magistrate and the other given to the police, the trial Court has rightly rejected them on the reasoning that the sequence of events, that was projected in the dying declarations, was opposed to basic common sense. To say that the appellant poured kerosene on the deceased and asked her to get into the room and lock the door and thereafter, lighted a match-stick and threw it on her through the window of the room, defies credulity. The State has not chosen to challenge the acquittal of the accused under Section 302 IPC.

13.In the written statement given by the appellant under Section 313 Cr.P.C., he has stated that, his marriage with the deceased was a love marriage; they were issue-less and this was troubling his wife; they consulted several doctors but to no avail; on 24.07.2012, he had a quarrel with his wife relating to purchase of cooking-gas connection; when he started his motor-bike to go to the provision stores for purchasing some provisions, he heard screams from inside the house and he, with his neighbours, Vellingiri and Mahalingam, broke open the door and found his wife in flames and immediately rushed her to the hospital.

14.Even in the inquest report of the Revenue Divisional Officer, there is no finding to the effect that the death was a 'dowry death'. In the statement given by Deivanai (P.W.1), mother of the deceased, to the Revenue Divisional Officer, she has stated that, Mahalingam called her over phone and told her about the incident and she rushed to the house of her daughter and there, the appellant was present and she found her daughter with burn injuries.

15. On a reading of the evidence on record, it is seen that there are no satisfactory materials to infer that the appellant had pushed his wife to the wall, resulting in her suicide. The presumption under Section 113-A of the Indian Evidence Act, 1872, can be discharged by the appellant by preponderance of probability, which, the appellant has satisfactorily done in this case.

In the result, this Criminal Appeal is allowed and the order of conviction and sentence passed by the Sessions Judge, Mahila Court (Magalir Neethimandram), Coimbatore, dated 31.12.2015 in S.C.No.159 of 2013 is set aside. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond, if any executed, shall stand discharged.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court,
Coimbatore.
2. The Inspector of Police,
All Women Police Station,
Perur, Coimbatore.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Jail,
Coimbatore.

+1cc to Mr.V.Sairam, Advocate Sr.53322

Cr1.A.No.46 of 2016

spd[co]
srg 06/08/2019