

Bail Slip

The Appellant/Accused, namely Devaki @ Deivanayaki aged 62 years W/o. Ganesan was granted on bail on bail as per order dated 12.12.2014 in CRL MP.NO.1/14 IN CRL A.NO.641/2014 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Crl.A.No.641 of 2014

Devaki @ Deivanayaki ... Appellant

vs.

State Rep. by
The Inspector of Police,
G-5, Melmaruvathur Police Station,
Kanchipuram District.

... Respondent

The Criminal Appeal has been filed under Section 374(2) of Cr.P.C, to call for records and set -aside the conviction and sentence imposed in S.C.No.63 of 2011 dated 24.11.2014 by the learned Sessions Judge, Mahila Court, Chengalpattu.

For Appellant : Mr.K.Gandhi Kumar

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction and sentence imposed in S.C.No.63 of 2011 dated 24.11.2014 by the learned Sessions Judge, Mahila Court, Chengalpattu.

2 The respondent police registered a case against the appellant and two others in Crime No.503 of 2010 for the offence punishable under Sections 498 (A) and 306 of IPC. After investigation, the respondent police laid a charge sheet and the same was taken on file in S.C.No.63 of 2011 by the learned Sessions Judge, Mahila Court, Chengalpattu. The learned Sessions Judge, after trial found A2 and A3 not guilty of offence charged against them and also A1 not guilty for the offence under Section 498(A), but, come to the conclusion that prosecution has proved the offence under Section 306 of IPC against the appellant/A1. Accordingly, by judgment dated 24.11.2014, acquitted A2 and A3, convicted the appellant/A1 and sentenced her to undergo rigorous imprisonment for a period of five years with fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for a further period of one year. Aggrieved against the judgment of conviction, the appellant is before this Court with the present criminal appeal.

3 According to learned counsel appearing for the appellant, P.Ws.1 to 3 are interested witnesses, even in the complaint lodged by P.W.1, it was not mentioned that the accused beaten his deceased daughter and poured kerosene and set fire on her, it was only stated that the appellant scolded the deceased, since she could not begot a child. But, before the Court P.Ws.1 to 3 had improved their version stating that the appellant beaten the deceased and poured kerosene on her and set fire, which could not be believable. P.Ws.4 to 9, have turned hostile and not supported the case of the prosecution. The case was registered at 1.30 p.m., but, whereas dying declaration of the deceased was recorded at 11.55 a.m. and it was stated that the deceased died at 12.00 p.m. The Doctor, who gave treatment to the deceased has stated that the deceased sustained 90-100% burn injuries, and therefore, it is not possible for a person, who sustained 90-100% burn injuries to speak or in sound state of mind. Therefore the dying declaration said to have been recorded from the deceased is doubtful and the trial Court has relied on the dying declaration for convicting the appellant under Section 306 of IPC. There are contradictions between the dying declaration and the evidence of P.Ws.1 to 3. There is no materials to show that the appellant induced the deceased to commit suicide and there is no ingredients to attract Section 306 of IPC. Further the deceased was not living with the appellant and she lived with her husband by setting up nuclear family. The appellant is aged about more than 65 years and the only document available to convict her is the dying declaration and that was also doubtful. Under these circumstances, when two views are possible, the view which favours the accused has to be taken into account

and hence the appellant is entitled for acquittal. It is to be noted that in this case A2 and A3 were acquitted by the trial Court extending benefits of doubt and also acquitted the appellant for the offence under Section 498(A) and erroneously convicted the appellant for the offence under Section 306 of IPC, which is liable to be set aside.

4 The learned Government Advocate (Crl.Sdie) appearing for the respondent police would submit that soon after the occurrence, the deceased was taken to the Hospital for treatment and the Doctor intimated about the admission of the deceased in the Hospital to the respondent police. The respondent police made arrangements to record dying declaration of the deceased. The Doctor/P.W.11, who treated the deceased, had stated that the deceased was in sound disposing state of mind at the time of recording dying declaration and has given certificate Ex.P6. Therefore the Magistrate, who was examined as P.W.10, satisfying with the report of the Doctor, has recorded the dying declaration and after recording the same the deceased died at 12.00 p.m. In the dying declaration, the deceased has clearly stated that since she had no issue, the appellant scolded her stating that she should leave her son and the deceased could not bear the same, poured kerosene on her and set fire. Therefore, based on the dying declaration, the trial Court convicted the appellant, which does not call for any interference.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 Case of the prosecution is that the deceased, who is daughter of the defacto complainant married with the son of the appellant, 10 years prior to the occurrence. The appellant, who is mother-in-law of the deceased, along with two other accused, used to scold the deceased directly and by pretexting, since she could not beget a child. Like that on the date of occurrence i.e. on 28.09.2010 at about 7.00 a.m. the appellant scolded the deceased stating that she should leave her son and the deceased could not bear the same, had poured kerosene and set fire on her own. Therefore the respondent police registered a case against the appellant and two others and after trial, the learned Sessions Judge, acquitted the other two accused and based on the dying declaration of the deceased, convicted the appellant.

7 It is not in dispute that the deceased married with the son of the appellant, 10 years prior to the occurrence and they had no issue. The appellant used to scold the deceased pointing out her inability to beget a child and ill-treated her at several occasions. Even

though, the learned counsel appearing for the appellant contended that the appellant and the deceased were living separately, but, admittedly both were living at the same locality. On the date of occurrence, i.e. on 28.09.2010, the appellant scolded the deceased stating that since the deceased could not beget a child, she should leave her son. The deceased, could not bear the words uttered by the appellant and hence poured kerosene and set fire on her own. Immediately after the occurrence, she was taken to the Hospital and information was given to the Police. The respondent police arranged to record dying declaration of the deceased and accordingly the Magistrate, who was examined as P.W.10, after satisfying with the certificate Ex.P6 issued by the Doctor, had recorded the dying declaration.

8 On a careful reading of the Exs.P4 to 6, it clearly reveal that the deceased, before commencement of recording dying declaration and after completion of dying declaration, was in sound state of mind. The Doctor, who was examined as P.W.11, had given certificate Ex.P6, which shows that the deceased was in sound state of mind to give a dying declaration. The Doctor/P.W.11, who is a best person to speak about the condition of the deceased, had clearly opined that the deceased was in sound state of mind and hence the dying declaration of the deceased Ex.P5 was clearly proved. There is no reason to discord the dying declaration Ex.P5, even otherwise, in the dying declaration, there is no exaggeration, it is only stated that the appellant uttered the words that since the deceased could not beget a child, should leave her son. After hearing the same, the deceased poured kerosene and set fire on her own. It is contended by the learned counsel appearing for the appellant, since the deceased sustained 90-100% burn injuries and hence she could not have given the alleged dying declaration. It is not mandatory that a person who is having 90-100% burn injuries cannot have sound state of mind, it depends upon the physical and mental condition of the person concerned. Further it cannot be said that a person, who is unconscious, subsequently cannot recover for a short period. On reading of evidence of the Doctors, P.Ws.11 & 12, who treated the deceased in the Hospital and who conducted autopsy, and also the Magistrate, P.W.10, who recorded the dying declaration of the deceased, after satisfying with the P.W.11 the Doctor's report, it clearly reveal that the dying declaration has been recorded only when the deceased was in sound state of mind. Even though, P.Ws.1 to 3 are interested witnesses and they may exaggerated the matter, there is no reason for P.Ws.10 to 11 to accuse the appellant. The learned Sessions Judge, has relied on the dying declaration of the deceased and acquitted other accused, but, come to the conclusion

that the appellant instigated the deceased to commit suicide and hence convicted her under Section 306 of IPC.

9 It is seen there is no allegations either against the husband of the deceased or the other accused in the dying declaration. No son will keep quite, when his mother made as an accused and in this case, the son of the appellant did not make any objections for the accusation made against his mother. It is clear from the dying declaration that the words uttered by the appellant only instigated the deceased to take such a decision committing suicide. This Court does not find any sound reason or ground to set aside the conviction made by the trial Court against the appellant.

10 The appeal is devoid of merit and substance and the same is dismissed for the reasons stated above. The trial court is directed to secure the appellant/accused to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Maduranthagam
2. Do thro the Chief Judicial Magistrate, Chengalpattu.
3. The superintendent, Central Prison, for women, Puzhal, Chennai.
4. The Additional Public Prosecutor, High Court of Madras.
5. The Inspector of Police, G-5, Melmaruvathur Police Station, Kanchipuram District.
6. The Sessions Judge, Mahila Court, Chengalpattu.
7. The Section Officer,
Criminal Section, High Court, Madras

+1cc to Mr.K.Gandhi Kumar , Advocate SR.No.55599

CrI.A.No.641 of 2014

A.SK(03/09/2019)