

**Bail Slip**

The Appellant / Accused namely Menaka, aged about 41 years W/O. Subramanian are directed to released a bail as per order of this Court dated 19.01.2012 made in M.P(MD)No.1 of 2011 in Cr1.A(MD) No.368 of 2011 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1. A.(MD)No.368 of 2011

Menaka

... Appellant/Accused No.1

Vs.

State by,
The Assistant Commissioner of Police,
Srirangam Range, Trichy City.
Crime No.52 of 2010

... Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for records and set aside the order passed in S.C.No.64 of 2011 on the file of the Sessions Judge, Mahila Court, Trichy, dated 01.12.2011 and allow the criminal appeal.

For Appellant : Mr.N.Sankar Ganesh

For Respondent : M/s.S.Bharathi,
Government Advocate(Cr1. Side)

JUDGMENT

The appellant was convicted for the offence under Section 304 (1) of I.P.C., and sentenced to undergo five years Rigorous Imprisonment with hard labour and to pay a fine of Rs.5,000/- vide Judgment dated 01.12.2011 in S.C.No.64 of 2011 on the file of the Sessions Judge, Mahila Court, Thiruchirappalli.



2. The case of the prosecution is that the deceased Priya was married to Saravanan on 23.04.2009. It was a love marriage. On 09.09.2010, Priya had gone with her father-in-law Subramaniam in his two wheeler to their temple. This was reported by accused No.4 Sangeeth, brother-in-law of the deceased to accused No.1 mother-in-law. Thereupon, the mother-in-law had abused the deceased Priya and picked up a quarrel with her. It is further alleged by the prosecution that there was also a dowry demand. As a result of the harassment made out by the accused, on 09.09.2010, at about 15.15 hours Priya committed self-immolation. After the occurrence, Priya was rushed to the Government Hospital, Trichy. Police intimation was sent. The Dying Declaration of Priya was recorded by P.W.11. A complaint was also said to have been given by Priya on 17.08.2010 vide Ex.P.2. The deceased also gave a statement before P.W.17 that was recorded as Ex.P.13. Based on Ex.P.13, Crime No.52 of 2010 was registered on the file of Srirengam All Women police station for the offences under Sections 498(A) and 307 of I.P.C. Investigation was taken up by P.W.19 Assistant Commissioner of Police, Srirengam Range. He recorded the statement of witnesses and after completing the usual formalities, laid final report against four accused before the learned Judicial Magistrate No.III, Thiruchirappalli, for the offences under Sections 498(A) and 304(B) of I.P.C. and Section 4 of the Women Harassment Act. Cognizance of the aforesaid offences was taken and the case was committed to the Sessions Court. It was made over to the Mahila Court in S.C.No.64 of 2011. The learned trial Judge framed the charges against all the four accused not only for the offences under Sections 498(A) and 304(B) of I.P.C. and Section 4 of the Women Harassment Act, but also for the offence under Section 302 of I.P.C. As already pointed out, accused No.1 is the mother-in-law, accused No.2 is the husband of the deceased, accused No.3 is the father-in-law while accused No.4 is the brother-in-law of the deceased. The accused denied the charges and claimed to be tried. The prosecution examined as many as 19 witnesses and marked Ex.P.1 to Ex.P.17. M.O.1 to M.O.6 were also marked. Ex.D.1 was marked on the side of the defence. The accused did not adduce any oral evidence. The incriminating circumstances were put to the accused and they merely denied the same as false. The learned trial Judge by the Judgment acquitted accused Nos.2 to 4 *in toto*. The appellant who figured as accused No.1 was found guilty under Section 304(1) of I.P.C., and sentenced as mentioned above. Questioning the same, this Criminal appeal came to be filed.

3. Heard the learned counsel on either side.

4. The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to reverse the impugned Judgment.

5. Per contra the learned Government Advocate appearing for the respondent submitted that the impugned Judgment does not call for any interference and wanted this Court to dismiss the appeal.



6. I carefully considered the rival contentions and perused the evidence on record.

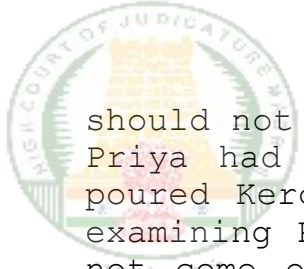
7. The appellant's counsel submitted that even according to the Investigation Officer, the deceased Priya committed suicide. In fact in Ex.P.7, it was only mentioned that accused No.1 poured kerosine on her and it has not been mentioned that she set fire to her. Only in the dying declaration namely, Ex.P.9, the deceased had stated that the appellant not only poured the Kerosine but also set fire to her. He therefore contended that when the materials on record clearly point out that the deceased committed suicide, the appellant could not have been found guilty of the offence under Section 304(1) of I.P.C.

8. The appellant's counsel also drew my attention to the fact that one of the residents of the locality, namely, P.W.5 also turned hostile and did not support the prosecution case. He further contended that P.W.1 herself would admit that the marriage between accused No.2 Saravanan and the deceased was a love marriage and that for one year, they lived happily together. Their matrimonial home was separate and distinct. They did not live with the appellant. They were not living in a joint family. Therefore, the appellant cannot be fastened with any liability for the suicide committed by the deceased. He would further contend that having rightly acquitted the appellant of the offence under Sections 498(A) and 304 (B) of I.P.C. and Section 4 of the Women Harassment Act, the Court below could not have found the appellant guilty of the offence under Section 304(1) of I.P.C.

9. What has to be found out first are the circumstances that ultimately led to the demise of Priya.

10. We have on record the dying declaration of the deceased Priya. The same was recorded by P.W.11 Judicial Magistrate No.III, Trichy. After Priya was admitted to the hospital, intimation was given and P.W.11 examined Priya. He noted that Priya was in a fit condition to give dying declaration. P.W.11 posed certain questions to her and he was satisfied that she was in a fit state of health and mind to make dying declaration. The endorsement of satisfaction of the learned Judicial Magistrate is very much found in Ex.P.9. When P.W.11 called upon Priya to explain what happened, she clearly stated that it was Menaka, mother-in-law poured Kerosine on her. Of course she would further allege that it was the mother-in-law who set fire on her. She had further stated that the appellant insinuated that there was illicit intimacy between her and her father-in-law Subramanian.

11. The specific allegation made by the deceased Priya in the dying declaration was that the appellant was entertaining suspicion against Priya. The appellant had quarrelled with her on this score. Priya had further stated that if she was to die, her mother-in-law



should not be spared. Even in the Accident Register, namely, Ex.P.7, Priya had maintained her stand that it was her mother-in-law who poured Kerosine on her. The prosecution had established Ex.P.9 by examining P.W.11 and P.W.10. To counter the same, the appellant has not come out with any contra defence version. She did not examine herself as a witness. Of course the appellant who facing accusation in a criminal case was not obliged to step into the witness box. She did not do so. But then, while answering the questions under Section 313 of Cr.P.C., she must come out with some stand. The purpose of examining the accused and putting the incriminating circumstances to the accused under Section 313 of Cr.P.C., is to give an opportunity to the accused. In this case, the accused had merely characterized the incriminating circumstances as false. In these circumstances, the Court below rightly came to the conclusion that it was the appellant who was responsible for the eventual demise of Priya.

12. I am however inclined to concur with the appellant's submission that the evidence on record is not sufficient to come to the conclusion that it was the appellant who actually set fire to Priya. In fact the Investigation Officer, namely, P.W.19 had himself stated that in the investigation, he only recorded that Priya set fire to herself. In fact the final report filed by him was only on those lines and the charge of murder was brought in only by the trial Court.

13. The marriage between Priya and Saravanan took place on 23.04.2009. The occurrence took place on 09.09.2010. This means that within a span of 15 months, the occurrence had taken place. Unless the deceased was driven by the situation, she would not have committed suicide. It was only the appellant who could have given explanation as to what actually happened. No such explanation is forthcoming from the appellant. Therefore, the statement given by the deceased will have to be necessarily accepted. Even if I eschew the statement that the appellant set fire to her, still the other allegations found in the dying declaration will have to be taken note of. It is not that the dying declaration will have to be accepted in *toto* or rejected in *toto*. The duty of the Court is to remove the chaff from the grain. Even though there is an apparent discrepancy between Ex.P.7 and Ex.P.9, the common denominator is that it was the appellant who poured Kerosine on her. Thus from the evidence on record, the prosecution has established its case beyond reasonable doubt that the appellant had poured Kerosine on the deceased. It has been further established by the prosecution based on the dying declaration that the appellant had inflicted mental cruelty on the deceased. The deceased had stated that the appellant went to the extent of insinuating that the deceased was kept by her father-in-law that is the husband of the appellant. A person who had suffered almost 100% burns and who was on the verge of death could not have only invented such an allegation unless it was true.



14. Section 498(A) of I.P.C., states that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years. The expression "cruelty" has been defined as any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Insulting the daughter-in-law that she is keeping the father-in-law is certainly an act of cruelty. No sensitive person can bear such an insinuation. This Court comes to the conclusion that the appellant had caused mental cruelty to the deceased Priya. Therefore, even though the conviction and sentence of the appellant under Section 304(1) of I.P.C., is liable to be set aside, I find the appellant guilty of the lesser charge under Section 498(A) of I.P.C. The appellant's counsel submits that the appellant is now aged about 62 years.

15. Taking note of the age of the appellant, the sentence of imprisonment imposed on the appellant is modified and reduced to 18 months Simple Imprisonment. The period of incarceration already undergone by the appellant will be set off under Section 428 of Cr.P.C. The learned trial Judge is directed to secure the appellant to undergo the remaining period of sentence. The bail bond, if any, executed by her shall stand cancelled.

16. The Criminal Appeal stands partly allowed, accordingly. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Sessions Judge/Mahila Court,
Trichy.
- 2.The Judicial Magistrate No.III,
Tiruchirappalli.
- 3.Do through the Chief Judicial Magistrate,
Tiruchirappalli District.
- 4.The Superintendent,
<https://hcservices.ecourts.gov.in/hcservices/>
Central Prison (Women),
Tiruchirappalli.



5. The Assistant Commissioner of Police,
Srirangam Range, Trichy City.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

7. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.SHANKAR GANESH, Advocate (SR-80078[F]

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06.08.2019

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