



Bail Slip

The Appellant/Accused namely Ravi @ Ravichandran, aged about 31 year S/o.Sami Ambalam was directed to be released on bail as per order of this Court dated 27.04.2010 and made in MP(MD)No.1 of 2010 in Crl.A. (MD)No.62 of 2010 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD)No.62 of 2010

Ravi @ Ravichandran

... Appellant/Accused

Vs.

State Rep. by
The Deputy Superintendent of Police,
Sivagangai Taluk Police Station,
Sivagangai.
(Crime No.24 of 2007)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records in S.C.No.88 of 2007, on the file of the learned Principal Sessions Judge, Sivagangai and set aside the judgment and conviction dated 25.01.2010 by the learned Sessions Judge, Sivagangai, in S.C.No.88 of 2007 and acquit the appellant.

For Appellant	: Mr.K.Samidurai
For Respondent	: Mr.A.Robinson
	Government Advocate (Crl. Side)

JUDGMENT

The appellant herein was found guilty of the offence under Sections 498(A) and 304(i) of I.P.C. and sentenced to undergo rigorous imprisonment of one year and seven years respectively vide judgment dated 25.01.2010 in S.C.No.88 of 2007, on the file of the learned Sessions Judge, Sivagangai. Challenging the same, this criminal appeal has been filed.

2.The case of the prosecution is that the marriage between the appellant and Kannathal was solemnized on 06.07.2006. The appellant suspected the fidelity of his wife and was abusing her in filthy language. The appellant also had apparel related grievances. While so, on 28.01.2007, the appellant had left his wife in the house of her parents. After attending a marriage function on 30.01.2007, Kannathal and her father Muthusamy, were returning home with certain household articles including a kerosene can containing five liters. Even as they entered, the



appellant abused Kannathal and beaten her. When Kannathal demanded as to why she is being treated so cruelly, the appellant is said to have uttered some provocative words calling upon her to die. He also allegedly poured Kerosene on her. Kannathal was set afire and she suffered 100% burn injuries.

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3. She was rushed to Government Hospital, Sivagangai at about 02.10 p.m. Intimation to the police was sent and the Head Constable attached to Sivagangai Taluk Police Station came to the Hospital and recorded the statement of Kannathal at about 08.00 p.m. After recording her statement, Crime No.24 of 2007 was registered at around 09.00 p.m. for the offence under Sections 307 and 498(A) of I.P.C. The appellant herein was shown as the sole accused. On the same day at 08.05 p.m., based on the requisition from the Hospital, the Judicial Magistrate No.II, Sivagangai came to the Hospital and recorded the dying declaration/Ex.P.8 of Kannathal. Kannathal succumbed to the burn injury on 01.02.2007 at about 06.15 a.m. Thereupon, an express report was sent by the Inspector of Police, Sivagangai Taluk Police Station, to the Judicial Magistrate No.II, Sivagangai vide Ex.P.10, and the FIR was also altered to one under Section 302 and Section 304(B) of I.P.C. Postmortem was conducted. Inquest was also conducted and after completing all the other usual formalities and recording the statement of various witnesses, final report was filed before the Judicial Magistrate No.II, Sivagangai, against the appellant herein. Cognizance of the offence under Sections 498(A) and 302 was taken and since the case was exclusively triable by the Court of Sessions, it was committed in P.RC.No.2 of 2007. The Sessions Court, in S.C.No.88 of 2007 framed charges under Sections 302 and 498(A) of I.P.C. The accused pleaded that he is not guilty of the offence and claimed to be tried.

4. The prosecution examined as many as 13 witnesses and marked Exs.P1 to P21. M.O.1 and M.O.2, namely., Saree and Kerosene were marked as material objects. On the side of the accused, no evidence was adduced.

5. The learned Trial Judge by judgment dated 25.01.2010 convicted and sentenced the appellant for the offence as above mentioned. Questioning the same, this criminal appeal has been filed.

6. Heard the learned counsel on either side.

7. The learned counsel appearing for the appellant submitted that the deceased/Kannathal having suffered 100% burn injury could not have been in position to give any dying declaration. He also pointed out that the Judicial Magistrate, who purportedly recorded her dying declaration, did not record as to whether she was in a



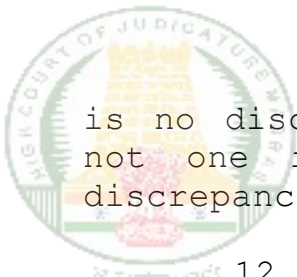
fit state of mind or not. In fact, he admitted this lapse on his part in the course of cross examination. When Kannathal's statement was recorded by P.W.8, the father of the deceased was present and hence the possibility of a tutored version cannot be ruled out. He emphasized the fact that the stand taken by P.W.1 before the Court below and the stand taken by him before the RDO were different. He also drew my attention to the statement of one Narayanan, who was examined before the Inquest Authority. The appellant's counsel laid stress on the testimony of the RDO, who was examined as P.W.10.

8.He also submitted that in this case there is more than one dying declaration. When there are multiple dying declaration before the Court, the Court must examine the same with utmost care. His core argument is that some petty wordy quarrel between the parties had led Kannathal to commit self-immolation. He submitted that her hypersensitive reaction cannot lead fastening of penal liability on the appellant. He also would contend that even though the names of some independent witnesses such as Rakku and Ganagalakshmi were mentioned, they were not examined. The learned counsel appearing for the appellant referred to quite a few reported decisions.

9.Essentially, the burden of his song is that the dying declaration of Kannathal should be rejected by this Court as unworthy of reliance. Per contra, the learned Government Advocate (Crl. Side) wanted this Court to sustain the impugned judgment on the ground that it does not call for any interference.

10.I carefully considered the rival contentions and perused the evidence available on record. It is not in dispute that the marriage between the appellant and the deceased/Kannathal took place on 06.07.2006 and that the occurrence in question was on 30.01.2007. Kannathal eventually succumbed to burn injury on 01.02.2007. The burn incident had taken place at the house of the appellant. On this, there cannot be any doubt. In fact, it was the brother of the appellant, who admitted the deceased/Kannathal in Government Hospital, Sivagangai. It is true that Kannathal had suffered 100% burn injury. It is a misconception that a person who suffered 100% burn injury will not be in a position to speak. In fact, a person who had suffered 100% injury may not have much of physical pain. Therefore, her physical condition cannot be a ground to doubt the dying declaration. In this case, Kannathal had given a statement before P.W.8/Head Constable and that led to the registration of Crime No.24 of 2007.

11.The Judicial Magistrate No.II, Sivagangai recorded her dying declaration immediately thereafter, ie., at 08.15 p.m. The version projected in FIR and Ex.P.8 are on the same lines. There



is no discrepancy between them. Therefore, the case on hand is not one in which there are multiple dying declarations with discrepancies.

12.It is true that P.W.5/Judicial Magistrate No.II in his cross examination had stated that in Ex.P.7, the certificate given by Doctor, it has not been mentioned that Kannathal was in a fit state of mind to give dying declaration. But then this Court perused Ex.P.7. Ex.P.7 reads that patient is conscious to give dying declaration. It is true that the expression 'fit state of mind' is not mentioned. But then, the certificate given by the Doctor is a clear indication that Kannathal was in fit state of mind to give dying declaration. More than anything else, when the Magistrate put a few questions to eliciting her name, her father's name and her husband's name., Kannathal gave correct answers. When a question was posed as to whether she was carrying any child, Kannathal answered in the negative. After recording her dying declaration, the learned Judicial Magistrate had also recorded that throughout Kannathal's physical and mental condition was fit. She was fully conscious. The testimony of P.W.5 could not be shaken.

13.Merely because her father was present when P.W.8/Head Constable recorded her statement, one cannot come to the conclusion that it was a tutored version. As she had suffered such extensive burn injury, her father obviously could not have left alone. The presence of the father cannot be put against the prosecution to doubt the credibility of the statement attributed to the deceased.

14.The deceased in her dying declaration had clearly mentioned that the appellant subjected her to cruelty both physical and mental. The appellant used to beat her. The appellant used to quarrel with her frequently. On the fateful day when the deceased returned with her father, the appellant had told her that he did not like her and that the deceased can go any where. When the deceased stated that in stead of suffering life with him, she can as well die, the appellant told the deceased that only if she died, he would be in a peaceful state of mind. When the deceased told the appellant that he would as well kill her, the appellant poured kerosene on her. It is not clear as to what happened immediately thereafter. There are two versions. In the FIR, it is stated that the appellant set her afire. But in the dying declaration given before the learned Judicial Magistrate, the deceased had stated that even though appellant had lit the matchstick, she did not know as to how she caught fire. Probably because of this, the learned trial judge tilted in favour of the accused and instead of convicting him for the offence under Section 302 of I.P.C. chose to convict him for the offence under



Section 304(i) of I.P.C.

15.P.W.1 is very much an eye witness. On 28.01.2007 after attending the marriage, the appellant had left his wife/Kannathal in the house of P.W.1. Since the appellant had grievance with the quality of the dress purchased by P.W.1, the father and the daughter namely., P.W.1 and the deceased had gone to textile shops to choose clothes for the appellant. They had also purchased few other household articles including kerosene and were returning home. P.W.1 is a natural witness in this case. He had clearly stated as to what happened. The version given in the dying declaration is more than corroborated by the testimony of P.W.1. They may be relevant witnesses. But when the prosecution case effectively rests on the dying declaration, non-examination of other independent witnesses will not really shake the core of the prosecution case. On a careful examination of the dying declaration of the victim, I find it to be totally reliable. The learned Trial Judge after a elaborate and detailed consideration of the evidence on record held that the prosecution established its case beyond reasonable doubt and that the appellant is guilty of the offence under Section 498(A) and 304(i) of I.P.C. I do not find any ground to interfere with the conviction imposed on the appellant.

16.At this stage, the appellant's counsel would submit that more than 12 years had lapsed since the occurrence had taken place and that the appellant recently met with a road accident. Taking note of these mitigating aspects, I reduce the period of sentence from seven years rigorous imprisonment for the offence under Section 304(i) of I.P.C. to five years rigorous imprisonment and confirm the sentence of imprisonment for the offence under Section 498 A IPC. Both the sentences shall run concurrently. The period of incarceration already suffered by the appellant will of course be adjusted in terms of Section 428 of Cr.P.C.

17.With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (RECORDS)

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Sub Assistant Registrar(CS)



Ias

TO

1.The Principal Sessions Judge, Sivagangai

2.The Judicial Magistrate No.2, Sivagangai

3.The Chief Judicial Magistrate,
Sivagangai

4.The Deputy Superintendent of Police
Sivagangai Taluk Police Station, Sivagangai

5.The Superintendent, Central Police,
Trichy

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

copy to

The Section Officer

Criminal Section

Madurai Bench of Madras High Court, Madurai-2 copies

+2 cc to Mr.K.Samidurai , Advocate SR.No.75645,76519

**Crl.A. (MD)No.62 of 2010
10.07.2019**

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