

BAIL SLIP

That the Appellant/Accused namely S.Duraimurugan was directed to release on bail as per order of this Court dated 21.11.2004 in MP. 1/12 in Crl.A.No.810/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.810 of 2012

S.Duraimurugan ... Appellant

Vs.

State, represented by its
Inspector of Police,
C-3, Seven Wells Police Station,
Chennai. ... Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 26.10.2012, passed by the Sessions Judge, Mahila Court, Chennai, in S.C.No.546 of 2010.

For Appellant : Mr.R.Karthikeyan

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

J U D G M E N T

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence, dated 26.10.2012, passed by the Sessions Judge, Mahila Court, Chennai, in S.C.No.546 of 2010.

2.The prosecution story is as under :

2.1.The appellant is the husband of the deceased Bhuvaneswari. The couple was blessed with two daughters, namely, Mithra and Sripriya, aged about 10 years and 8 years,

respectively, at the time of occurrence. The appellant was working as a Police Constable and was residing with his family in Flat No.5, M-Block, Kondithope Police Quarters, Chennai - 600 079.

2.2.On 11.09.2009, a quarrel ensued between the appellant and his wife, due to which, his wife committed suicide by hanging in the bedroom of their house in the early hours of 12.09.2009.

2.3.On coming to know it, the appellant cut the rope, lowered the body, took it to the kitchen of the flat, cut the tube of the cooking gas cylinder, collected petrol in a McDowell's brandy bottle from his motor-cycle, sprinkled it on the body of his wife, and set fire to it.

2.4.Thereafter, he rang the calling bell of his neighbour, Kumar (P.W.1), who was also a Police Constable then, and asked for a bucket of water, saying that the gas cylinder had burst resulting in injuries to his wife.

2.5.Selvaraj (P.W.7), a Police Constable on duty in the police quarters, saw smoke coming out of the window of the appellant's house and rushed there. He also joined Kumar (P.W.1) and they gave a bucket of water to the appellant and went inside the flat. They found the charred body of the appellant's wife in the kitchen and suspected some foul play.

2.6.On receipt of intimation, fire service personnel came to the place of occurrence and inspected the flat. Veerapandian (P.W.8), a Fireman, observed that the regulator of the gas cylinder was on and the tube was cut. By the time Firemen came, the fire was already extinguished.

2.7.On the complaint (Ex.P1) lodged by Kumar (P.W.1), Damodaran (P.W.20), Inspector of Police, registered a case in Crime No.637 of 2009 under Section 174 Cr.P.C. and prepared the printed F.I.R. (Ex.P12), which reached the jurisdictional Magistrate on the same day at 02.55 p.m., as could be seen from the endorsement thereon.

3.Investigation of the case was continued by Damodaran (P.W.20), who went to the place of occurrence and prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P13) in the presence of witnesses, Suresh (P.W.9) and Anand (not-examined). From the place of occurrence, the Investigating Officer seized the following items under the cover of Mahazar (Ex.P3).

- i. a gas lighter (M.O.1)
- ii. an Indane Gas cylinder (M.O.2)
- iii. a blood stained sleeping mat (M.O.3)
- iv. a gas tube which was found cut into two pieces (M.O.4)
- v. a broken glass bangle (M.O.5)
- vi. a blood stained cotton swab (M.O.6)
- vii. a match box with label "FIGHTER 626" (M.O.7)
- viii. a bottle cap with petrol smell (M.O.8)
- ix. a 7'o clock Blade (M.O.9)
- x. a yellow colour nylon rope in three pieces (M.O.10)
- xi. a half burnt cloth with petrol smell

The Observation Mahazar (Ex.P2) shows that the gas cylinder (M.O.2) was intact.

4. Inquest was conducted over the body of the deceased and the inquest report was marked as Ex.P15. The body of the deceased was sent to the Government Stanley Medical College Hospital, Chennai, where, Dr.Vedanayagam (P.W.18) performed autopsy on the body of the deceased. Blood samples were drawn from the body of the deceased and were sent to the Tamil Nadu Forensic Sciences Laboratory for examination.

5. Dr.Vedanayagam (P.W.18), in his evidence, as well in the post-mortem certificate (Ex.P10), has stated that he noticed ligature mark around the neck of the deceased; there were also epidermal burns in the lateral portion of the body. He did not find any soot particles in the trachea, larynx and lungs. He, in his evidence, as well in the post-mortem certificate (Ex.P10), has opined that the burn injuries were post-mortem in nature and the deceased would appear to have died of Asphyxia due to hanging.

6. Based on further investigation, the case was altered from one under Section 174 Cr.P.C. to Sections 306 and 201 IPC, vide alteration report (Ex.P16).

7. The appellant was arrested on 12.09.2009 and based on his confession statement, the police recovered the following items under the cover of Mahazar (Ex.P5) in the presence of Sarathy (P.W.10) and Ramachandran (not-examined) :

- i. a blood stained brown colour lungi (M.O.11)
- ii. a 180 ml McDowell's brandy bottle with petrol smell (M.O.12)

8. The seized articles were sent to the Tamil Nadu Forensic Sciences Laboratory for examination and report. Yuvarani (P.W.16), Scientific Assistant Grade-II, examined the blood of the deceased and opined that it belongs to Group-'A', vide Serology Report (Ex.P9). Prabhakaran (P.W.19), Assistant

Chemical Examiner to Government, examined the sleeping mat (M.O.3), cotton swab (M.O.6) and brown colour lungi (M.O.11), and detected human blood in each of them, vide Biology Report (Ex.P11). Thereafter, these items were sent to the Serology Department, where, Jayanthi Sakthisekaran (P.W.14), Scientific Assistant Grade-II, examined them and opined that the human blood in the cotton swab (M.O.6) and lungi (M.O.11) belong to Group-'A', vide report (Ex.P7). Mallika (P.W.15), Scientific Assistant Grade-I, examined the McDowell's brandy bottle (M.O.12) and detected petrol in it, vide report (Ex.P8).

9. After the transfer of Damodaran (P.W.20), investigation of the case was continued by Senthil Kumaran (P.W.21), Inspector of Police, who examined witnesses, collected various reports, completed the investigation and filed a final report in P.R.C.No.125 of 2010 before the Court of VIII Metropolitan Magistrate, George Town, Chennai, for the offences under Sections 306 and 201 IPC, against the appellant.

10. On appearance of the appellant, 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.546 of 2010 and was made over to the Mahila Court, Chennai, for trial.

11. The trial Court framed charges for the offences under Section 306 and 201 IPC against the appellant. When questioned, the appellant pleaded 'not guilty'.

12. To prove the case, the prosecution examined 21 witnesses and marked 16 Exhibits and 12 Material Objects.

13. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked from the side of the appellant.

14. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 26.10.2012, in S.C.No.546 of 2010, acquitted the appellant of the offence under Section 306 IPC, but convicted him of the offence under Section 201 IPC and sentenced him to rigorous imprisonment for three years and pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one month.

15. Challenging the aforesaid conviction and sentence qua Section 201 IPC, the appellant is before this Court.

16. Heard Mr.R.Karthikeyan, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side), appearing for the respondent/State.

17.The State has not chosen to challenge the acquittal of the appellant of the charge under Section 306 IPC. It is pertinent to state here that all the relatives of the deceased, viz., Salamma (P.W.2), mother of the deceased, Mithra (P.W.3), daughter of the deceased, and Venkatesan (P.W.4), brother of the deceased, turned hostile and did not support the case of the prosecution. That apart, the marriage of the appellant with Bhuvaneswari was more than seven years prior to her suicide. Hence, the presumption under Section 113-A of the Evidence Act was not available to the trial Court. In the absence of evidence of cruelty, the trial Court acquitted the appellant of the charge under Section 306 IPC.

18.Now, what remains for consideration is whether the conviction of the appellant of the offence under Section 201 IPC could be sustained.

19.From the evidence of Dr.Vedanayagam (P.W.18), it is clear that there was ligature mark around the neck of the deceased and the burns suffered by her were post-mortem and not ante-mortem, since there was no soot particles in the breathing tract. That apart, the police had seized the nylon rope from the place of occurrence, which was allegedly used by the deceased to hang herself. In the cross-examination of Dr.Vedanayagam (P.W.18), it was not even suggested to him that the death of Bhuvaneswari was on account of gas cylinder burst. Veerapandian (P.W.8), the Fireman, who came to the place of occurrence, has stated that the gas cylinder was intact and the regulator was open and the gas tube was found cut. The police have, in fact, seized the gas cylinder and it has been marked as M.O.2. Petrol was detected in the McDowell's Brandy bottle (M.O.12), which was recovered on the confession of the appellant, which is relevant under Section 27 of the Evidence Act. The presence of the appellant at 05.30 a.m. on 12.09.2009 has been spoken to by his neighbour, Kumar (P.W.1), and Selvaraj (P.W.7), a Police Constable who was on escort duty in the police quarters. These two witnesses have clearly stated that the appellant asked for a bucket of water from Kumar (P.W.1), saying that he needs it to douse the flames, as his wife had suffered burn injuries due to gas cylinder burst. The defence was not able to make any serious dent in the testimony of Kumar (P.W.1) and Selvaraj (P.W.7) in the cross-examination. Thus, the scientific evidence shows that the burns were post-mortem in nature and the ligature mark was ante-mortem in nature, and there was no cylinder burst, may be because it was empty. Had there been LPG in the cylinder, then, the whole Police Quarters would have gone on flames when the appellant cut the tube and lighted the match stick. A great disaster stood averted providentially despite the foolhardiness of the appellant.

20.The false explanation given by the appellant to Kumar (P.W.1) and Selvaraj (P.W.7) that his wife had suffered burns due to gas cylinder burst is a powerful circumstance against him. The evidence of Kumar (P.W.1) and Selvaraj (P.W.7) were put to the appellant during questioning under Section 313 Cr.P.C., but he did not give any explanation, except denying them. In the opinion of this Court, the prosecution has proved the charge under Section 201 IPC beyond a peradventure.

21.In view of the above, the conviction of the appellant of the offence under Section 201 IPC is confirmed.

22.Mr.R.Karthikeyan prayed for some leniency in the sentence on the ground that the appellant has to take care of his two unmarried daughters, who are now more than 18 years of age.

23.Accepting the submission of Mr.R.Karthikeyan, the substantive sentence of three years rigorous imprisonment qua Section 201 IPC is reduced to 18 months rigorous imprisonment. Fine and default sentence shall remain the same.

In fine, this Criminal Appeal is partly allowed. The trial Court is directed to secure the appellant and commit him to prison to undergo the remaining sentence.

Sd/-

Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

- 1.The VIII Metropolitan Magistrate,
George Town, Chennai.
- 2.The Chief Metropolitan Magistrate, Egmore,
Chennai.
- 3.The Sessions Judge,
Mahila Court,
Chennai.
- 4.The Inspector of Police,
C-3 Seven Wells Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.

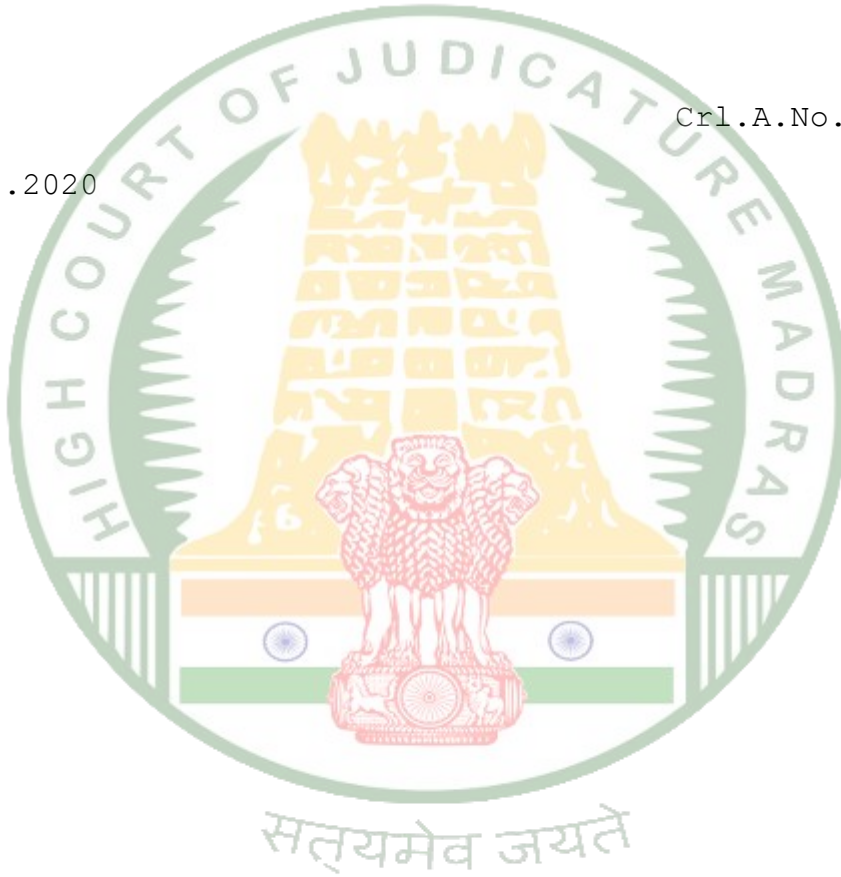
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The Deputy Registrar		with a direction to send back the
(Criminal Section),		original records, forthwith, to the
High Court, Madras.		trial Court

+1cc to Mr.R.Karthikeyan, Advocate, 6929.

MG(CO)
CSR: 10.03.2020

Cr1.A.No.810 of 2012



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