

Bail Slip

The Petitioners/Accused 3 to 5 viz Mari, Ellammal and Chitra were directed to be released on bail as per order of this Court dated 17.12.2018 and made in M.P. No.16181/2018 in Crl.A. No. 294/2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.11.2020

Dated : 19.11.2020

Coram

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Criminal Appeal No.294 of 2018

1.M.Kala

2.Mari

3.Ellammal

4.Chitra

... Appellants/Accused 2 to 5

Vs.

The State represented by

The Inspector of Police,

Madurantagam Police Station,

Kancheepuram District.

(Crime No.876/2009)

.. Respondent

Criminal Appeal is filed under Section 174(2) of the Code of Criminal Procedure, 1973 to set aside the order of conviction passed by the learned Judge in S.C.No.101 of 2013 dated 03.04.2018 made by the Mahila Court, Chengalpet.

For Appellants : Mr.V.Parthiban
for Mr.K.Mariappan

For Respondent : Mr.K.Prabhakar,
Additional Public Prosecutor

JUDGMENT

M.M.SUNDRESH,J.

The appellants, who are arrayed as A2 to A5 and charged under Section 302 read with 109 IPC and accordingly, convicted by the trial Court by the judgment dated 03.04.2018 in S.C.No.101 of 2013, seek to set aside the same in this appeal. Pending trial, A1-Muthu died and life imprisonment has been imposed on the first appellant on two counts.

.2.FACTS:-

2.1.The deceased-Venkatesan was the son of A1-Muthu and A2-Kala. A1 and A2 are the father and mother of the deceased-Venkatesan. The second deceased-Shuba was the wife of the deceased-Venkatesan and thus, daughter-in-law of A1 and A2. A3-Mari was the brother of A1-Muthu and thus, paternal uncle of deceased-Venkatesan. A4-Ellammal is the wife of A3-Mari and A5-Chitra is the daughter-in-law of A3-Mari and A4-Ellammal. A1-Muthu died pending trial.

2.2.The deceased-Venkatesan married deceased-Shuba against the wishes of the accused persons. There was a prior quarrel between the deceased Shuba and A5-Chitra while taking water from the pipe on 06.10.2009. On the next day night at about 8.00p.m.,A1 and A2 along with the other accused quarreled with the deceased Shuba. The deceased-Venkatesan took the deceased-Shuba into their house. Thereafter, A1 and A2 entered into the house of the deceased, poured Kerosene which was kept there and lit fire. Both the deceased were admitted in the hospital. Dying declaration were recorded from them. The deceased-Venkatesan implicated only A1 while the deceased-Shuba implicated A1 and A2.

2.3.In pursuant to the statement obtained from the deceased-Shuba under Ex.23, Ex.P24-First Information Report has been registered on 08.10.2009. After completion of the investigation, charge sheet has been laid as aforesaid. Before the trial Court, the prosecution examined 18 witnesses in toto and marked Exs.P1 to P30 and M.Os.1 to 7. After framing charges, the appellants were placed with the incriminating materials and questioned under Section 313-A of the Criminal Procedure Code. There was only mere denial by the appellants. The trial Court convicted all the appellants.

3.WITNESSES:-

P.W.1 is the mother of the deceased Shuba. PW.2 is the brother-in-law of P.W.1 and the husband of P.W.3, who is the sister of P.W.1. P.W.4 is the sister of P.Ws.1 and 3. P.W.5 is the eye witness, who turned hostile. P.Ws.6 and 7 are the post-mortem Doctor and the Forensic Science Expert. P.Ws.8 and 9, who turned hostile, are the witnesses to the observation mahazar. P.W.10 is the Revenue Divisional Officer, who conducted the

inquest. P.Ws.11 and 12 are the Doctors, who attested the Dying Declarations. P.W.13 is the Judicial Magistrate, Chengalpet, who recorded the confession statements from the deceased. P.W.14 is the hostile witness, who attested the confession statements from the deceased and P.W.15 is the Doctor, who gave the death Report. P.W.16 is the Police Officer, who registered the First Information Report while P.Ws.17 and 18 are the Investigating Officers.

4.DOCUMENTS:-

4.1.The prosecution has marked about 30 documents. Exs.P1 and P2 are the Post Mortem Reports. Ex.P8 is the Inquest Report of P.W.10. Ex.P9 is the statement given by P.W.1 before P.W.10 to the effect that she came to know about the occurrence from others. Thereafter, she saw both the accused in the hospital and her daughter died without responding to the treatment and she had stated that it is the accused, who committed the offence, the fire was doused by the first appellant/A2 and the deceased were admitted in the hospital by the neighbors. This statement was recorded by the P.W.10 on 15.10.2009.

4.2.Ex.P10 is the Final Report of P.W.10, who once again records the statement made by P.W.1 under Ex.P9. This document states that A1 and A2 along with the other accused after committing the offence brought them to the hospital for treatment. Incidentally, he has stated that there is no dowry death involved.

4.3.Exs.P11 to P14, P18 and P19 are the documents evidencing the dying declaration given along with Doctors' Certificates on the mental capacity of the deceased to depose. P.Ws.16 and 17 are the Accident Registers dated 07.10.2018. Ex.P20 is the signature of P.W.14, who attested the confession statement. This witness turned hostile.

4.4.Ex.P23 is the complaint given by the deceased-Shuba dated 08.10.2009. Exs.P27 and 28 are the Observation Mahazar and the sketch. Ex.P29 is the recovery mahazar. Under Ex.P30, the offence charged has been modified pursuant to the death of the deceased.

5.Discussion on the Witnesses and the Documents Marked:-

5.1.P.Ws.1 to 5 are the eye witnesses of which, P.W.5 turned hostile. As stated, these witnesses are the family members and close relatives of the deceased Shuba. P.W.1 has given her statement to P.W.10-Revenue Divisional Officer under Ex.P9 to the effect that she came to know about the occurrence only later. However, she deposed that she saw the occurrence. In her cross examination, she has stated that she did not interfere as she thought that the fight was between the mother-

in-law and daughter-in-law. She stated that she saw the occurrence in the presence of 100 to 200 villagers. She saw the deceased only when they came out from the house by crying. A further statement has been made that she gave the complaint along with P.W.2. Thus the evidence of P.W.1 is contrary to her own statement recorded by P.W.10.

5.2.P.W.2 deposed on the same line as that of P.W.1. This witness and P.W.3 are husband and wife and they are the residents of Kancheepuram. She has also deposed in the same manner. Both these witnesses also made statements on the presence of numerous other persons. P.W.4 has stated that she is a resident of Sathanur, living with her mother. Further, she has stated that she was present on that date. It is her further evidence that the general public, who were present, did not take any steps to stop the quarrel. A statement has been made that during the fight they were outside the house. Evidence adduced by P.Ws.2 to 4 is also against their earlier statements given by them before the P.W.18-Investigating Officer.

5.3.P.W.10 is the Revenue Divisional Officer, who conducted the inquest under Ex.P8. She has admitted that P.W.1 has stated that she came to know about her daughter having been taken to the hospital and thereafter, she saw both of them. She has deposed in tune with the report given by her under Ex.P10. To be noted, Ex.P10 exonerates the accused for dowry demand. P.W.10 further states that the accused doused the fire along with others and admitted the deceased in the hospital. However, the report has been given that the accused committed the offence.

5.4.P.W.16 is the Sub Inspector of Police, who registered the complaint under Ex.P24. The thumb impression of deceased-Shuba had been obtained. The investigation had been taken over by P.W.18, who in his cross-examination has deposed as under:-

"P.W.1 did not say anything about dowry harassment in her statement during investigation. She did not say anything about the prior occurrence on 06.10.2009. She further stated that A1 poured Kerosene and A2 through the lamp, lit fire on the deceased Shuba, which factum is made known to her only from the statement made by her. Even P.W.2 did not say anything about the specific overt act. Similarly, P.W.3 has also made a statement that she came to know about the occurrence only from the deceased and she did not see the occurrence. P.W.4 belongs to Chennai and even she made a statement that she knew about the occurrence only from the deceased."

5.5.It is further deposed by P.W.18 that he was aware of the statement made by P.W.10 on the deceased having been brought to the hospital having informed by others. P.W.18 further accepted that in the Inquest Report of Forensic, it has been stated by the persons who have been enquired that A1 and A2 committed the offence.

5.6.Both the deceased gave dying declarations under Exs.P18 and P19 along with Exs.P11 to P14. The learned Magistrate, who recorded them and deposed as P.W.13 and the Doctor, who gave the certification, have stated in their evidence that the deceased Venkatesan and Shuba though suffering from 75% and 90% burn injuries, were in disposing state of mind to give their statements. The deceased Shuba in her dying declaration has stated that the members of the family were talking to each other in a congenial atmosphere. However, thereafter oral quarrel took place and her mother-in-law viz., A2(first appellant herein) poured the Kerosene, which was lit by A1. The deceased Venkatesan went out to bring water and poured it on her. It was followed by the neighbours, who took them to the hospital.

5.7.In the confession statement of deceased Venkatesan, he deposed that after the quarrel he came to his house along with other deceased. At that point of time, A1 poured Kerosene on them. However, he did not know, who lit the fire. Both the deceased came running out of the house. The neighbours brought the Auto followed by Ambulance and admitted the deceased thereafter. He also doused the fire by pouring water. Exs.P16 and P17-Accident Registers say that the injured persons were allegedly lit fire by five known persons.

6.TRIAL COURT'S FINDING:-

The trial Court, placing reliance upon the evidence of Pws.1 to 4, 12 and 13, rendered conviction. It was accordingly, held that the accident registers and the statement made by P.W.12 would go to show that five persons were responsible. Reliance has been made on the dying declarations given. The discrepancy between the dying declaration of the deceased was explained by the trial Court holding that the victims being injured, the same is liable to be ignored. The evidence rendered by P.Ws.1 to 4 was accordingly accepted. However, no specific finding has been given on the role of A3 to A5 insofar as the charge under Section 109 IPC is concerned. Though P.W.10 has stated that there is no evidence regarding a dowry demand and in the absence of evidence before the Court, the trial Court accordingly, convicted all the accused while not imposing any sentence on the same.

7.Submissions of the learned counsel for the appellant:

The learned counsel appearing for the appellant submits that P.Ws.1 to 4 could not have been the eye witnesses in view of the statement made before P.W.10 and in the light of Exs.P9 and P10 coupled with the evidence of P.Ws.10 and 18. There is material discrepancy in dying declarations. It is the case of suicide committed by the deceased-Shuba. Even in the dying declaration, both the deceased have stated that the deceased Venkatesan went out to bring water. Therefore, it could not have been possible for accused persons to be present. P.W.5 has turned hostile. The first complaint has been suppressed. P.Ws.1 and 2 have stated about the complaint given by them. There is absolutely no material to implicate A3 to A5 for the offence punishable under Section 109 IPC. Even assuming that there was a quarrel between them, the same cannot be a ground to implicate A3 to A5. There is no specific overt act attributed against A1 and A2. Therefore, the appeal has to be allowed by setting aside the judgment of the trial Court.

8.Submissions of the learned Additional Public Prosecutor:

The learned Public Prosecutor appearing for the State submitted that the trial Court rightly convicted the accused by placing reliance upon Exs.P16 and 17 read with the evidence of P.Ws.12 and 13. Though there is no contrary evidence as against other accused, the attending circumstances will have to be seen. Notwithstanding the fact that P.W.14, who attested Ex.P23, the thumb impression has not been disputed. The trial Court, rightly relied upon the dying declarations, which inspired the confidence of the Court. As we are dealing with the homicide due to the injuries suffered as corroborated by the post mortem reports under Exs.P1 and P2, the small discrepancies under Exs.P18 and 19 are liable to be ignored. In any case, there is a specific role attributed to A2(first appellant). Thus, the criminal appeal requires to be dismissed.

9.DISCUSION:-

9.1.P.Ws.1 to 4 are admittedly the family members of the deceased. We have discussed the evidence rendered by them along with that of P.W.8 and 18. The statement given by them are in total contravention to the one given before the P.W.10. Ex.P18 is very clear that P.W.1 was not present. Not only, P.W.10-Revenue Divisional Officer, who is an official witness, the Investigation Officer, who examined himself as P.W.18, has clearly stated that different statements have been given by P.Ws.1 to 4 to the effect that they were not present in the place of occurrence when it happened. Therefore, in view of the aforesaid clear and categorical statements given by P.W.10 and 18, who are the Revenue Divisional Officer and the Investigation Officer respectively, we have no hesitation in holding that P.Ws.1 to 4 are not the eye witnesses to the occurrence.

9.2.The complaint given under Ex.P23 has been registered under Ex.P24. Though P.W.14 has turned hostile, it cannot be stated that the said complaint is liable to be thrown out. It is the statement that signature has been obtained with the thumb impression of the deceased. However, this complaint has to be seen in the context of the statement made under Exs.P18 and 19 and in the light of Exs.P11 to 14. These two statements are the dying declarations given by the deceased. Both P.Ws.12 and 13 have deposed that the deceased were in a proper state of mind to give their statements. The deceased Venkatesan has implicated the father since died. He had also stated that the occurrence took place in his house. While the deceased Shuba was serving food to deceased-Venkatesan, A1 entered and poured Kerosene. It is he who poured water though he did not know who set fire. He has further clearly stated that the villagers came and took them to the hospital thereafter. Thus, from the above, the presence of the other accused has not been mentioned. The other deceased Shuba had deposed that there was a quarrel and while she was at her home, A2 has poured Kerosene on herself and on her husband and lit fire by A1. Even she has stated that the deceased Venkatesan poured water on her and they were taken to the hospital by neighbors.

9.3.From the statements made by the deceased, the presence of P.Ws. 1 to 4 was never mentioned and so also the presence of A3 to A5. In fact, the deceased-Shuba has not implicated the presence of A3 to A5 in her statement. From the said statement, we further held that the offence under Section 498-A has not been made out. As discussed, Even P.W.10 has given a categorical finding on that. There is also no evidence to haul the accused under Section 498-A IPC. On the contrary, the materials available would show that it is the love marriage between the deceased, which caused the trouble.

9.4.The learned counsel appearing for the appellants submitted that insofar as the first appellant is concerned, apart from the discrepancy between two dying declarations, the Revenue Divisional Officer viz., P.W.10 has deposed in tune with Ex.P10, as it is stated therein that this appellant also took the deceased to the hospital. Therefore, the subsequent conduct also is the fact to be seen. We are afraid that the said contention cannot be countenanced. Though the subsequent conduct of the accused is the relevant fact under Section 9 of the Indian Evidence Act, 1872, which is to be considered with on the facts and circumstances of the each case, we are dealing with the case where the deceased gave dying declaration which inspires the confidence of the Court. She had stated that the first appellant had poured Kerosene. We find force in the reasoning of the trial Court that inasmuch as both the victims

were suffering from burn injuries, there may be some discrepancies. However, there is no need for the deceased to implicate the first appellant. As stated, P.Ws.12 and 13 have clearly deposed in tune with Exs.P11 to P14, P18 and P19.

9.5.The learned counsel for the appellants made submission on the suppression of the earlier complaint. We are of the view that what is important to be considered is evidenciary value of Exs.P18 and P19. Once we held that Ex.P18 inspires the Court, we did not go much deeper on the other aspect viz., Ex.P23 and 24.

9.6.Insofar as A3 to A5 are concerned, we do not find any material to implicate them. Merely because the accident registers under Exs.P16 and P17 make a mention about the five known persons, these accused cannot be implicated. As stated, it is not even the statement of the deceased Shuba that these persons were present nor they instigated A1 and A2 to commit the offence. While there is no material even to hold that the prior quarrel, assuming there is any, the same alone cannot be a ground to attract Section 109 IPC. There must be some evidence to hold that A3 to A5 instigated A1 and A2 to commit the offence. At the cost of repetition, we once again hold that even the deceased has not implicated these accused in her dying declaration. If she is so conscious to implicate the first appellant nothing prevented her from making a statement that the other accused viz., A3 to A5 were either present or instigated to commit the offence. The learned trial Judge did not give a categorical finding on the alleged role of these accused persons. We may note, there is a reference in the Accident Registers under Ex.P16 and Ex.P17 to the effect that it is PW.4 who admitted them. This cannot be true. We have already held that P.W.4 could not have been an eye witness by taking note of various facts including her earlier statement. Thus, we hold so by taking note of the fact that under Ex.P18 the deceased-Shuba herself was saying that initially there was a normal talk prior to the occurrence. If one considers Exs.P17 along with Ex.P18, which is the dying declaration given by the deceased-Venkatesan, there is absolutely no material to implicate A3 to A5. The deceased Venkatesan has merely stated that he brought his wife viz., deceased-Shuba into his house after the quarrel. At that point of time, A1-his father entered into the house and poured Kerosene on them. Thus there is no reference about A3 to A5.

10.CONCLUSION:-

Thus, in the light of the aforesaid discussion made, we are of the view that the appellants are entitled for acquittal insofar as the charge framed for having committed the offence punishable under Section 498-A of IPC is concerned. Insofar as the charge under Section 302 read with 109 IPC is concerned, the appellants 2 to 4 were accordingly acquitted. The Judgment of the trial Court in S.C.No.101 of 2013 dated 03.04.2018 on the

file of Mahila Court, Chengalpet, insofar as A3 to A5 are concerned stands set aside accordingly as aforesaid and the appellants 2 to 4/A3 to A5 are acquitted of the charges framed against them and the fine amounts, if any, paid, shall be refunded to them and the bail bond, if any, executed by them shall stand cancelled. Insofar as the first appellant/A2 is concerned, the conviction and sentence rendered under Section 498-A IPC is set aside and the appeal is allowed and acquitted of the charge framed against her and conviction and sentence rendered by the trial Court under Section 302 IPC stands confirmed and thus, the first appellant stands convicted for the offence punishable under Section 302 IPC(both counts) and the appeal is allowed in part.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Judge, Mahila Court, Chengalpet
- 2.The Superintendent, Central Prison, Puzhal, Chennai.
- 3.The Inspector of Police,
Madurantagam Police Station,
Kancheepuram District. (Crime No.876/2009)
- 4.The Additional Public Prosecutor,
High Court, Chennai.

सत्यमेव जयते Criminal Appeal No.294 of 2018

MP (CO)

SP (05/01/2021)

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