

BAIL SLIP

The appellant/accused R.Manimaran, S/O V.L.Ramu was already directed to be released on bail and by the order of this court dated 3/4/2014 and made in MP No. 1/2014 in CrI.A. No.183/2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2020

Pronounced on : 17.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.A.No.183 of 2014

R.Manimaran

...Appellant/Accused

Vs.

The State Rep. By
The Inspector of Police,
Thiruninravur Police Station,
Thiruninravur,
Thiruvallur District.

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of conviction and sentence passed by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track-Mahila Court), Thiruvallur, in S.C.No.176 of 2011 dated 06.03.2014.

For Appellant : Mr.V.Manohar
for Mr.T.Parthasarathy
For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

J U D G M E N T

The present Criminal Appeal has been filed to set aside the

judgment of conviction and sentence dated 06.03.2014, passed in S.C.No.176 of 2011 by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track-Mahila Court), Thiruvallur.

2. The appellant is the sole accused. He stood charged for the offence under Sections 498-A and 306 of IPC. By judgment dated 06.03.2014, the learned Sessions Judge, Magalir Neethimandram, (Fast Track-Mahila Court), Thiruvallur, convicted the appellant under Section 498-A of IPC for a term of two years rigorous imprisonment with a fine of Rs.25,000/- in default to undergo rigorous imprisonment for six months. The accused has been acquitted for the charge under Section 306 of IPC. Challenging the said conviction and sentence, the accused is before this Court, by filing the present Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:

(i) PW1- Gopinath, is the relative of the deceased. Before 13 years from the date of occurrence, the marriage between the accused and the deceased was solemnised and thereafter, they were blessed with two female children and one male child. Eldest female child has been living at her grand father's house at Jolarpet and the remaining two children were living with the accused and deceased. On 01.07.2010, at about 3.30pm, PW1, received a phone call from PW7-Dhandapani that there was a fight at the accused house, in between the accused and the deceased and directed him to go and to know about it. Before he reached the house, the deceased had died with burn injuries in her house and a bureau and a cart were also found burnt. At that time, there was fire, which has been set off by the people surrounding there. When at the time PW1 reached the deceased house, the accused was not there. He was informed that the accused left the place with burn injuries. After some time, the parents of the deceased reached the scene of occurrence and found the dead body of the deceased.

(ii) Before that, PW2-Esakipillai and PW3-Saroja, who are the neighbours to the accused, heard the burst sound, became excited and came out from the house and had seen that a fire accident has taken place in the accused house.

(iii) Upon receipt of the complaint given by PW1, Mr.V.Mahadevaraj [PW17], the then Sub Inspector of Police, Thiruninravur Police Station, registered the FIR in Cr.No.288 of 2010 under Section 174 of Cr.P.C. The printed FIR is marked as Ex.P9. After the registration of the FIR, PW17, handed over the case records to the PW20-Mr.R.Mohamed Abibullah, Inspector of Police, for investigation.

(iv) PW20, on receipt of the case records from PW17, took up the same for investigation, and on the same day at about 4.45pm,

he visited the scene of occurrence and in the presence of witnesses PW1-Subramanian and PW9-Prabhu, he prepared the observation mahazar under Ex.P14. He had drawn the rough sketch under Ex.P15. In the presence of the same witnesses, he seized the case properties viz., 5 litres of Servo Plastic cane with half litre Kerosene oil and Match Box, under the cover of Mahazar, Ex.P16.

(v) In the meantime, on the same day at about 9.10pm, the deceased Bhuvaneswari was brought to the hospital and found there were burn injuries all over the body. After declaring the death of the deceased, the dead body was sent to the mortuary. An Accident Register copy was issued in this regard under Ex.P10.

(vi) In continuation of the investigation, PW20 examined the witnesses and prepared the inquest report under Ex.P17. He entrusted the dead body to one Police Constable, Manikandan, with a direction to send the same to the Government Hospital for post-mortem.

(vii) At about 5.30 pm, PW15-Dr.Anbuselvan attached with Kilpauk Medical College Hospital, on receipt of requisition given by PW20, on 02.07.2010 at about 2.45 pm, conducted the autopsy over the dead body of the deceased and found the following injuries.

"Injuries: Dermo Epidermal burns with charring of anticle exposing the underlying pink red dermis involving the head, face, neck, chest, abdomen, front and back of both upper limbs, front and back of both legs and back. Deep burns involving the front and back of both thighs and gluteal regions. There were no other external injuries anywhere on the body.

O/D Scalp bones, membranes: Intact, brain normal.

Hyoid bone; intact, larynx and trachea; Black soot particles, loosely over the

Heart: Clotted blood in all chambers.

Lungs: Both normal in size c/s congested.

Stomach: 100ml of black colour fluid with no specific smell.

Intestines: Liver spleen with kidneys: Normal in size c/s congested. Bladder: Empty. Uterus: Normal in size c/s empty. Pelvis: Spinal Column Intact.

Cause of death: Pending visceral analysis.

According to him, the deceased would appear to have died of shock due to extensive burns.

(viii) During the time of post-mortem, PW15 collected the viscera and sent the same for chemical examination and inturn, PW16-Mr.K.P.Devarajan, officer from Forensic Science Laboratory, examined the viscera and issued a certificate stating that there

was no poisonous substance found in the viscera, which was collected from the dead body of the deceased. The post-mortem certificate issued by the Doctor was marked as Ex.P6 and the final opinion was marked as Ex.P7. The report given by the PW16 was marked as Ex.P8.

(ix) In the meantime, PW18-Dr.Baskar attached with Kilpauk Medical College Hospital, on 01.07.2010 at about 5.30pm, examined the accused Manimaran, who has been brought by a police constable with burn injuries for treatment. The injured accused was unconscious and he sustained burn injuries in his two hands and two legs. The first aid treatment was given to the accused, for which an Accident Register copy under Ex.P11 was issued by PW18.

(x) In continuation of the investigation, PW20, examined the witnesses and recorded their statements. Thereafter, he altered the section of law from 174 Cr.P.C to Sections 498-A and 306 of IPC and the alteration report is Ex.P18. He arrested the accused on 03.09.2010 at about 11.30pm at Anna Nagar, Nemilicherry and recorded the confession statement in the presence of PW10 and PW11. He sent the case properties to the Court. Finally, he came to the positive conclusion that the appellant herein committed an offence under Section 498-A and 306 of IPC and filed a final report, accordingly.

4. Based on the above materials, the trial Court framed the charges for offence under Section 498-A and 306 of IPC. The accused denied the same and opted for trial. Therefore, the accused was put on trial. Hence, in order to prove the case on the side of the prosecution, 20 witnesses have been examined as PW1 to PW20 and 19 documents were marked as Ex.P1 to P19, besides three material objects, viz., M.O.1 to M.O.3.

(i) Out of the said witnesses, PW1-Gopinath, is the relative of the deceased. He speaks about the information received from Dhandapani (PW7) that there was a fight at the accused house in between the accused and the deceased and about the direction given by PW7 for visiting the accused house. When at the time, he reached the house of the accused, there was a fire which is set off by the people surrounding there. The accused was not there. Then he lodged a complaint before the police under Ex.P1. PW2-Isakki Pillai, is the neighbour of the accused. He has stated that the accused often come with drunken mood and fight with the deceased. On the date of occurrence, he found that there was a crowd at the accused house and came to know that a fire accident has taken place at the accused house.

(ii) PW3-Saroja is also a neighbour to the accused. She gave the evidence as similar to the evidence of PW2. PW4-

Prabakaran is the son of the deceased. He has deposed that prior to the occurrence, the accused directed his mother to bring cash from her father, for which, his mother refused to comply with the request. On the other hand, she made an attempt to self immolate herself and the same was prevented by his sister Priyankalakshmi. Further he has stated that the accused has the habit of consuming alcohol and had regularly beaten the deceased. On 01.07.2010, when he returned from the school, he found that his house was in a flame. Then PW3 called and asked his grandfather's phone number. Consequentially, the matter was informed to his grandfather. According to him, the accused often come with drunken mood and beaten the deceased.

(iii) PW5-Videngan, is the father of the deceased. He speaks about the information received in respect of the occurrence. He was informed that during the time of fire incident his son-in-law (accused) tried to set off the fire. In the said attempt, he also sustained burn injuries and left the place for picking up an autorickshaw. According to him for the past eight years, he had been giving a huge sum and also spending money for his grand children's education. PW6-Pappammal is the mother of the deceased. She gave evidence similar to that of evidence given by PW5.

(iv) PW7, Dhandapani, is son of PW5 and PW6 and brother of the deceased. He has stated more or less in the same lines as of his parents.

(v) PW8-Padmanabhan, has stated that the accused is a tenant under him. Once in a month, he happened to visit the scene of occurrence for collection of rent from the tenants. On the date of occurrence, he received a phone call that at the accused house a fire accident has taken place and came to the scene of occurrence on the next day morning from Pondicherry.

(vi) PW9-Prabhu, speaks about the preparation of the observation Mahazar and rough sketch drawn by the investigation officer. PW10- Munusamy is also a witness, who has attested in the confession statement given by the accused.

(vii) PW11-Munusamy is the resident of the same locality. He has stated about the details in respect to the recording of confession statement from the accused. PW12- is the photographer and he has spoken about taking of photographs in the scene of occurrence.

(viii) PW13-Mr.S.Narasimhan, is the Head Constable attached with Pattabiram Police Station. He has stated that on 01.07.2010, when he was in beat, he saw the accused lying in CTH Road with burn injures.

(ix) PW14-Sethuraman, is the Gr-I Constable attached with Thiruninravur Police Station. He speaks about the entrustment of the dead body for post-mortem.

(x) PW15-Dr.Anbuselvan, attached with Kilpauk Medical College Hospital speaks about the details of the post-mortem and the injury sustained by the deceased.

(xi) PW16-Mr.K.P.Devarajan, is the Deputy Director working in the Forensic Science Department, Chennai. He speaks about the examination of viscera, which was collected from the dead body of the deceased Bhuvaneshwari.

(xii) PW17-Mr.Mahadevaraj, the Sub-Inspector of Police speaks about the receipt of complaint from PW1 and about the registration of FIR.

(xiii) PW18-Dr.Baskar attached with Kilpauk Medical College Hospital, speaks about the examination of accused and also about the details of burn injuries sustained by him.

(xiv) PW19-M.Subramani, is the neighbour of the deceased. He speaks about the preparation of observation mahazar by the investigation officer.

(xv) PW20-Mr.Mohamed Abibullah, the then Inspector of Police, Thiruninavur Police Station, has stated about the examination of witnesses, preparation of observation Mahazar, Rough sketch, securing the accused, examination of Doctors and about the filing of the final report.

5. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, in order to prove his case, he neither produced any witness on his side nor marked any documents.

6. Having considered all the materials placed before him, the learned Sessions Judge, Magalir Neethimandram, (Fast Track-Mahila Court), Thiruvallur, came to the conclusion that the accused is not found guilty for the offence under Section 306 of IPC. However, he convicted the accused under Section 498-A of IPC and sentenced him as indicated in the 2nd paragraph of this judgment. Aggrieved over the conviction and sentence, the accused has come up with the present appeal.

7. I have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor for the respondent / State and also perused the records carefully.

8. In the judgment rendered by the trial Court, it was observed that due to the regular consumption of alcohol by the accused and also due to the beating of the deceased, he created an unpleasant situation in the family of the deceased and therefore, the said situation, had driven the deceased for committing suicide and the same is within the explanation of Section 498-A of IPC and thereby, the accused is found guilty for offence under Section 498-A IPC.

9. Now, on considering the said findings with relevant evidences, which are examined on the side of the prosecution, to prove the cruelty, committed by the accused, the neighbours of the accused, has been examined as PW2 and PW3. Though they were cited as occurrence witnesses, during the time of giving evidence before the trial Court, they have not stated anything about the occurrence. They have simply said that only after seeing the smoke in the accused house, they rushed to the place of occurrence. Therefore, both of them were treated as an hostile witness on the side of the prosecution.

10. Though they were treated as hostile witnesses, in their Chief examination, they have specifically stated that the accused herein regularly comes to his house in a drunken mood and beat the deceased. In otherwise, in order to prove the cruelty committed by the accused/appellant, the son of the accused viz., Prabhakaran, father-in-law-Thiru.Videngan and mother-in-law, Tmt.Pappammal, are examined as PW4 to PW6 respectively. PW5 and PW6 have categorically stated that after the marriage, frequently the accused herein harassed the deceased with a demand to bring money from her parents' house. Though PW5 and PW6 have stated like this, PW4, who is the son of the deceased did not say anything about the harassment made by the accused in respect to the demand of money.

11. In this regard, the counsel appearing for the appellant would submit that in respect to the demand of money made by the accused, the evidence given by PW5 and PW6, is in contradiction with the evidence given by the investigation officer and therefore, the particular evidence in respect to the demand of money stated by PW1 and others cannot be taken into account for considering this case.

12. Now, on considering the said submission, it is true, during the time of cross examination, PW20, who is the investigation officer in his evidence has stated that during the time of examining the witnesses, nobody has stated that the accused herein demanded more money. Particularly, PW6 did not say anything about the demand made by the accused. Therefore, it is made clear that the evidence in respect to the demand of money, by the accused, is not proved beyond reasonable doubt.

13. It is a case, during the time of occurrence, the deceased set herself on fire and as a result of which she died. Further, the evidence given by PW13 Head constable and PW18-Dr. Baskar, reveals the fact that in the occurrence the accused herein also sustained burn injuries and went to the stage of unconscious.

14. In this regard, the learned counsel appearing for the appellant/accused would contend that due to the family dispute, in order to threaten the accused, the deceased herein poured the kerosene on her body and when at the time she attempted to set fire, the accused attempted to save her, but unfortunately the alleged accident has occurred, for which convicting the accused, is not necessary.

15. Now, considering the said submission with the evidence of PW4, it is true, the deceased is having the habit of pouring the kerosene to herself and attempt to commit suicide. In the said circumstances, PW4 and his sister would prevent the deceased from doing so. The evidence given by PW4 to PW6, is that prior to one day from the date of occurrence, the accused herein, went to Jolarpet and obtained a loan of Rs.10,000/- from PW5. Further, on the date of occurrence, he has not reached his home till PW4 left for school. However, only during that time, when the accused is present in his house, the alleged occurrence had happened. Therefore, under Section 106 of the Evidence Act, it is for the accused to explain the circumstances as under what circumstances the occurrence had happened.

16. In this regard, though the accused has not given any specific explanation during the time of examining him under Section 313 Cr.P.C., the specific case of the accused is that during the time of occurrence, the deceased herein attempted to commit suicide, by pouring the kerosene and when the same was prevented by the accused, he has also sustained burn injuries. The said defence taken by the accused is very clear and therefore, this Court is of the opinion that the accused had narrated the circumstances as under what circumstances, the occurrence had happened. If really the deceased has decided to commit suicide due to unpleasant situation created by the accused, it is not necessary for her to commit suicide in the presence of the accused. Further, the son of the deceased deposed that the deceased regularly threatens to kill herself and created a scene. Therefore, it is probable during the time of occurrence, she created a scene but on account of her negligence, she suffered burn injuries and died.

17. Therefore, I am of the opinion that the prosecution has not proved the cruelty and harassment committed by the accused, and also the entire evidence given by the prosecution witnesses,

did not reveal the fact that the wilful act of the accused, had driven the deceased for committing the suicide. In this aspect, the trial Court has not considered the evidence perspectively and has convicted the accused for the offence under Section 498-A, which is liable to be set aside.

18. Accordingly, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Sessions Judge, Magalir Neethimandram (Fast Track-Mahila Court), Thiruvallur, in S.C.No.176 of 2011 dated 06.03.2014, are set aside and he is acquitted of the charge. Fine amount, if any, paid, shall be refunded to the appellant/accused. Bail bond, if any, executed by the appellant/accused, shall stand cancelled.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars

To

1. The Judicial Magistrate,
No.I, Tiruvallur.
2. The Chief Judicial Magistrate,
Tiuvallur(for Information).
3. The Sessions Judge,
Magalir Neethi Mandram,
(Fast Track-Mahila Court),
Thiruvallur,
4. The Inspector of Police,
Thiruninravur Police Station,
Thiruninravur,
Thiruvallur District.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Parthasarathy, Advocate, SR42196

Pre-delivery judgment in
Criminal Appeal No.183 of 2014

CO(AD)
BDL/18/01/2021