

BAIL SLIP

The Appellant / Accused No.2 namely Devaki W/o. Kannappan was directed to be released on bail as per the order of this court dated 31.07.2014 in Crl.mp.No.1/2014 Crl Appeal No.395/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.No.395 of 2014

Devaki,
W/o.Kannappan,
No.11/25, Bajanaikoil 1st Street,
Kalyanapuram,
Ambattur,
Chennai - 600 098. ... Appellant / Accused No.2

Vs

The State rep. by
The Assistant Commissioner of Police,
Ambattur Range,
Ambattur,
Chennai - 600 053.
Crime No.589 of 2010 Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment dated 05.07.2014 in S.C.No.180 of 2013 on the file of the learned Sessions Judge, (Fast Track Mahila Court) Thiruvallur.

For Appellant : Mr.K.M.Ramesh

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

J U D G M E N T

The present appeal has been filed to set aside the judgment of conviction and sentence dated 05.07.2014 in S.C.No.180 of 2013 passed by the learned Sessions Judge, (Fast Track Mahila Court) Thiruvallur.

2. The appellant herein is arrayed as second accused in the above referred case. The first accused in this case (now acquitted) is her husband. While at the time of framing charges, the learned trial Judge framed charges against both the accused under Section 498A, 306 and 304(b) of IPC. By the judgment dated 05.07.2014, the learned Sessions Judge, Mahila Court, Thiruvallur, convicted the appellant under Section 498A of IPC and sentenced to undergo two years rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo three months rigorous imprisonment. Further convicted the appellant herein for the offence under Section 306 of IPC and sentenced to undergo five years rigorous imprisonment and to pay fine of Rs.2,000/- in default to undergo six months rigorous imprisonment. The learned Sessions Judge, Mahila Court, acquitted the appellant for the offence under Section 304(b) of IPC, and also acquitted the first accused for all the charges. Challenging the said conviction and sentence the appellant is before this Court by filing this present Criminal Appeal.

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

(i) P.W.1 Amutha is the sister of the deceased Amul @ Arunthathi. P.W.2 Ashok is her brother. Before the occurrence, the deceased fell in love with one Balaji who is the son of the accused. Subsequently, without getting consent from their parents, both of them got married. Since the marriage solemnised between the deceased and Balaji is a love marriage, the parents of the deceased did not give any seethana property to the deceased. Due to the wedlock, the deceased gave birth to one male child.

(ii) In the meantime, the appellant harassed the deceased and demanded to bring dowry. The same was intimated by the deceased to P.W.1 and P.W.2 in person, but P.W.1 advised the deceased to go her matrimonial home. On 23.01.2010 when P.W.1 was in the house of the deceased, the appellant was resting because she had surgery. However, the appellant quarrelled with the deceased for the reason that the breakfast prepared by the deceased was not good. After compromising the said issue, P.W.1 returned to her home for attending normal work. On the same day, at about 12.45 hours, she heard the news that the deceased poured kerosene on herself and set it on fire. Immediately P.W.1 rushed to the deceased house and found that her sister was died with burn injuries. She informed the occurrence to her brother P.W.2 and in turn PW2 lodged a complaint before PW8 under Ex.P1.

(iii) P.W.8, the then Sub Inspector of Police, Ambattur, on receipt of the complaint, registered a case in Crime No. 589 of 2010 under Section 174(3) of Cr.P.C. The printed FIR is marked as Ex.P.4. After registration of FIR, he handed over the case

records to P.W.9, who is the then Assistant Commissioner of Police, Ambattur Division for investigation.

(iv) P.W.9 Kumaravel, the then Assistant Commissioner of Police, Ambattur, on receipt of the FIR took the same for investigation. He visited the scene of occurrence and in the presence of witnesses P.W.5 and P.W.6, prepared observation mahazar under Ex.P.6. He also drawn rough sketch under Ex.P.5. In the presence of same witnesses, he recovered a plastic cane, burned matchstick, one matchbox and sample cloth in burned stage (M.O.1 to M.O.4) under the cover of mahazar. He informed the occurrence to the Revenue Divisional Officer, for conducting enquiry.

(v) On receipt of information given by P.W.9, Tmt.Subbulakshmi, the then Revenue Divisional Officer conducted enquiry and prepared inquest report under Ex.P.10. According to her, the death is due to harrasment made by the appellant and others in respect to the dowry. Further she sent requisition to the hospital authority for conducting postmortem. On receipt of the requisition, Dr.K.Selvaraj, attached with Keelpauk Medical College Hospital, on 24.07.2010 at about 4.30 p.m., conducted autopsy and issued postmortem certificate under Ex.P.11, stating that the deceased would appear to have died due to the burn injuries. Further the Accident Register issued by Dr.Sureshbabu was marked as Ex.P.12.

(vi) In continuation of investigation, P.W.9 examined all the witnesses and recorded their statements. After receipt of the report given by the Revenue Divisional Officer, he altered the Section of law from 174(3) of Cr.P.C., to under Section 498A, 306 and 304(b) of IPC and sent alteration report under Ex.P.8 to the judicial Magistrate. After completing the above formalities, since he was transferred from the post, he handed over the case records to his successor.

(vii) P.W.10, the then Assistant Commissioner of Police, who is the successor of P.W.9, after receipt of the case records conducted further enquiry and on 21.12.2011 arrested both the accused and sent them to remand. After completion of investigation, he came to the conclusion that both the accused have committed the offences under Sections 498A, 306 and 304(b) of IPC and filed final report accordingly. Before that he sent the M.Os. to the Court through Form-95.

4. Based on the above materials, the learned Sessions Judge, (Fast Track Mahila Court), Thiruvallur, framed charge under Sections 498A, 306 and 304(b) of IPC. Both the accused pleaded not guilty. In order to prove their case, on the side of the prosecution 10 witnesses have been examined as P.W.1 to

P.W.10 and 13 documents were marked as Ex.P.1 to Ex.P.13, besides four Material Objects viz., M.O.1 and M.O.4.

(i) Out of the said witnesses, P.W.1 Amutha, is the sister of the deceased, she speaks about the harassment made by the accused to the deceased and also about the quarrel happened between the appellant and the deceased on the date of occurrence. P.W.2 Ashok is the brother of the deceased, he stated about the demand of dowry made by the accused and also about the lodgement of the complaint.

(ii) P.W.3 Govindasamy is the resident of same locality, he did not support the case of the prosecution. P.W.4 Gopinath who is also residing in the same locality deposed that he did not know the occurrence. P.W.5 and P.W.6 are the neighbours of the deceased. Both of them deposed about the preparation of observation mahazar and rough sketch and also about the seizure of material objects.

(iii) P.W.7, Chandrasekar, the then Head Constable deposed about the identification and entrustment of the dead body to the Doctor for conducting postmortem. P.W.8 speaks about the receipt of the complaint from P.W.2 and about the registration of FIR. P.W.9 and P.W.10 are the Assistant Commissioner of Police, Ambattur Division, they speak about the examination of the witnesses, details of conducting postmortem and also about the filing of the final report.

5. When the above incriminating materials were put to the accused, under Section 313 Cr.P.C., both the accused denied the same as false. However they did not choose to examine any of the witness and not marked any of the document on their side. The learned Sessions Judge, Mahila Court, Thiruvallur after perusing all the materials and also on considering the arguments advanced on either side, convicted and sentenced the appellant as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court with the present appeal.

6. I have heard Mr.K.M.Ramesh, learned counsel appearing for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

7. The learned counsel appearing for the appellant would contend that before the trial Court in order to prove the occurrence, the brother and sister of the deceased alone examined as P.W.1 and P.W.2. Though they narrated the occurrence, in support of the prosecution, they have not stated specifically in respect to the demand of dowry made by the

accused. During the time of enquiry before the Revenue Divisional Officer, no body has stated the demand made by the accused. Therefore, the omission in giving the evidence in respect of dowry, on the part of P.W.1 & 2 creates doubt whether the alleged occurrence had happened as alleged by the prosecution or not. Accordingly, the appellant is entitled for the relief of acquittal and therefore he prayed to allow the appeal and to set aside the conviction rendered by the trial Court.

8. Per contra, the learned Additional Public Prosecutor appearing for the respondent police would contend that the witnesses examined on the side of the prosecution proved the charges framed against the accused persons. According to him, the interference of this Court in the findings arrived by the trial Court is not necessarily and therefore, he prayed for dismissal of this appeal.

9. I have considered the rival submissions made on either side and perused the documents on records carefully.

10. On going through the evidence given by P.W.1. and PW2, both of them reached the scene of occurrence only after hearing the news from others. On the other hand, the evidence given by P.W.1 is very clear that on the date of occurrence, in the morning hours, in respect of preparation of breakfast, both the accused and the appellant made quarrel with each other. The said evidence is very clear that the said quarrel is not in respect of bringing dowry from the parents of the deceased. Though P.W.1 and P.W.2 has stated that before the occurrence, the deceased informed them that the appellant had demanded to bring dowry, in this regard, during the time of enquiry before the Revenue Divisional Officer, they have not stated about the harassment made by the accused in respect of the dowry demand.

11. More than that, the witnesses examined on the side of the prosecution did not say any specific reason which likely to drive the deceased for committing suicide. Mere quarrel between the appellant and the deceased in respect of preparation of food is an ordinary family dispute and in the sense it cannot be said that the said incident is likely to drive the deceased for committing suicide.

12. Apart from that, for the reasons best known to the trial Judge, during the time of enquiry, he has not examined the Revenue Divisional Officer, who conducted enquiry and prepared the inquest report and the Doctor, who conducted autopsy over the body of the deceased. The reason for not examining all those witness has also not narrated in the judgment rendered by the trial Court. Due to the non examining of Revenue Divisional

Officer, the accused denied the opportunity to cross-examine the said witness in respect of the statement given by the witnesses and also in respect of the opinion given by the Revenue Divisional Officer. It is a well settled law that denial of opportunity to cross-examine the witnesses is nothing but violation of natural justice.

13. In respect of the conviction and sentence awarded to the appellant for the offence under Section 306 of IPC, it is necessary to find out whether the quarrel happened between the deceased and the accused is sufficient to abet the deceased for committing suicide. The whole reading of the evidence given by P.W.1 and P.W.2 disclose the fact that the marriage of the deceased is a love marriage. Till such time the deceased gave birth to one male child, nothing was happened in the family of the deceased. More than that, in respect to the demand of dowry, P.W.1 and P.W.2 had been given identical evidence before the trial Court as well as before the Revenue Divisional Officer. As a whole, the only fact which remains for committing suicide is on the date of occurrence, the accused quarrelled with the deceased.

14. At this juncture, it is relevant to see the judgment of our Hon'ble Apex Court reported in (2019) 17 SCC 301 in the case of Ude Singh Vs. State of Haryana, which reads as follows :-

"For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of

abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."

Applying the ratio laid in the above referred judgment with the case in our hand, the evidence given by P.W.1 and P.W.2 and the opinion given by the Revenue Divisional Officer are contrary to each other in respect of the abetment committed by the accused.

15. In general, if no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. To decide the issue, it is very useful to see the decision rendered by our Hon'ble Apex Court reported in AIR 1990 (1) SC 79 in the case of Padia Veera Reddy Vs. State of A.P., as follows :-

"10. Before adverting to the arguments advanced by the learned Counsel we shall at the threshold point out that in the present case here is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests :

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion

that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra)."

16. Further in respect of proving the offence under Section 306 of IPC, it is necessary to see the decision of the Hon'ble Apex Court reported in (2010) 1 SCC 710 in the case of Amalendu Pal Vs. State of W.B., which reads as follows :-

"10. The legal position as regards Sections 306 IPC which is long settled was recently reiterated by this Court in the case of Randhir Singh v. State of Punjab (2004) 13 SCC 129 as follows in paras 12 and 13:

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. v. Orilal Jaiswal this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the

offence of suicide should be found guilty."

17. Herein also applying the ratio laid down in the above referred judgments, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 of IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. Here it is a case merely quarrel in respect of preparation of food is not sufficient to hold that the same is amount to cruelty and it cannot be said as harassment to the victim.

18. Accordingly, I am of the confirmed opinion that the prosecution is failed in proving the case beyond all reasonable doubts. The learned Session Judge, Fast Track Mahila Court, Thiruvallur while at the time of disposing the present case did not consider the evidence put forth by the prosecution in proper manner and came to the above conclusion which is erroneous in law.

19. In the light of the above discussion, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Session Judge, Fast Track Mahila Court, Thiruvallur in S.C.No.180 of 2013, dated 05.07.2014 is hereby set aside. The appellant/accused is acquitted of all charges. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

rts
To

- 1.The Sessions Judge,
(Fast Track Mahila Court) Thiruvallur.
- 2.The Principal Sessions Judge, Thiruvallur.
- 3.The Assistant Commissioner of Police,
Ambattur Range,
Ambattur,
Chennai - 600 053.

4.The Superintendent, Central Prison,
Puzhal, Chennai.

5.The III Additional Sessions Judge, Thiruvallur.

6.The Public Prosecutor,
High Court, Madras.

7.The District Collector / District Magistrate
Thiruvallur.

8.The Director General of Police , Tamil Nadu,
Mylopre, Chennai-4.

+1 cc to M/s.K.M.Ramesh, Advocate Sr.No. 31504

CRL.A.No.395 OF 2014

BR(CO)
RMP(05/02/2021)



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