



Bail Slip

(1) S.Anandhi, (Female/32 years/2014), W/o.A.Selvan, Appellant/
Accused No.3 (in Crl.A.(MD).No.316/2014) and (2) A.Selvakumar,
(Male/36 years/2014), S/o.Arunachalam (3) A.Chandra (Female/58
years/2014) Appellants/Accused No.1 & 2 (in Crl.A.(MD).Nos.319/2014)
were released on bail of this Court order dated 13.01.2015 in MP
(MD).Nos.1 & 1/2014 in Crl.A.(MD).Nos.316 & 319 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 03.02.2020
PRONOUNCED ON : 07.02.2020**

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A(MD)Nos.316 & 319 of 2014

1.S.Anandhi	... Appellant / Accused No.3 in Crl.A.No.316 of 2014
2.A.Selvakumar	
3.A.Chandra	... Appellants / Accused Nos.1&2 in Crl.A.No.319 of 2014

Vs.

State rep by The Inspector of Police, Thisayanvilai Police Station, Tirunelveli District (In Cr.No.47 of 2007)	... Respondent / Complainant in both the appeals
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COMMON PRAYER: Appeals filed under Section 374(2) of Criminal Procedure Code, against the Judgment of the learned Sessions Judge / Mahila Court, Tirunelveli in S.C.No.346 of 2011, dated 14.11.2014.

For Appellants (in both Appeals)	: Mr.Arulvadivel @ Sekar
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For Respondent (in both Appeals)	: Mr.K.Suyambulinga Bharathi Govt. Advocate (crl.side)
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**COMMON JUDGMENT**

These Criminal Appeals have been filed by the Appellants / Accused Nos.3 and A1 & A2 respectively, against the Judgment and conviction passed by the learned Sessions Judge / Mahila Court, Tirunelveli in S.C.No.346 of 2011, dated 14.11.2014, convicting and sentencing the appellants / accused as follows:-

Sl. No.	Rank of the Accused	Offence under which convicted	Sentence of imprisonment	Fine amount
1.	A1 & A2	Under Section 4 of Dowry Prohibition Act	Two years Rigorous imprisonment	Rs.5,000/-, in default, to undergo 3 months R.I.
2				
3				
4.		Under Section 406 IPC	Three years Rigorous imprisonment	Rs.2,000/-, in default, 3 months R.I.
		Under Section 498 (A) IPC	Three years Rigorous imprisonment	Rs.2,000/-, in default, 3 months R.I.
		Under Section 307 IPC	10 years R.I.	Rs.5,000/-, in default, 6 months R.I.
5	A3	Under Section 307 r/w 34 IPC	10 years R.I.	Rs.5,000/-, in default, to undergo 6 months R.I.

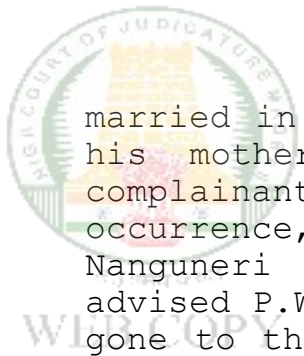
The sentences were ordered to run concurrently.

2. For the sake of convenience and clarity, the accused are referred to, according to their ranks, as mentioned in the charge.

3. The facts and issues involved in both the appeals were similar, arising out of a Common Judgment and hence, both the appeals are taken up together for final disposal.

4. **The case of the prosecution is as follows:-**

A1 is the husband of the defacto complainant; A2 is mother-in-law and A3 is the sister-in-law. The defacto complainant and A1 got



married in the year 2003. They blessed with two children. A1 and his mother A2 often demanded dowry and tortured the defacto complainant. In this regard, even one month prior to the occurrence, the defacto complainant preferred a complaint before Nanguneri All Women Police Station. On 09.03.2007, the Police advised P.W.1 and A1 to join and to live together. Hence, P.W.1 had gone to the house of A1 along with her children and parents, who had accompanied her, were standing outside. As soon as P.W.1 entered into the house, A1 caught hold of her by hair, A2 shouted at P.W.1 stating that she is the reason for all the disgrace to the family and asked A3 to get the kerosene can to set her ablaze. A3 brought the kerosene and handed over to A1, who poured kerosene on P.W.1. P.W.1 pushed A1, crying for help came out and thereafter lodged a complaint / Ex.P1 to the Nanguneri All Women Police Station, which came to be registered in Crime No.4 of 2007. Thereafter, on the point of jurisdiction, this case was transferred to the file of Thisayanvilai Police, who had registered a case in Crime No.47 of 2007, for the offence under Sections 498-A and 307 IPC. Thereafter, on conclusion of investigation, charge sheet came to be filed against the accused for the offence under Section 4 of Dowry Prohibition Act, and Sections 406, 498(A), 307 and 307 r/w 34 IPC.

5. The prosecution to prove the case had examined P.Ws.1 to 8 and marked Exs.P1 to P5. No material objects were marked. On the side of the accused, no witness was examined nor any document was marked.

6. P.W.1 is the victim, estranged wife of A1; P.W.2 is the mother of P.W.1; P.Ws.3 and 4 are the Observation Mahazar witnesses, who have not supported the case of the prosecution; P.W.5 is the Sub-Inspector of Police, attached to All Women Police Station, Nanguneri. On 15.03.2007, P.W.1 had lodged a complaint. Based on her complaint, Ex.P2 / FIR came to be registered. P.W.6 is the Head Constable attached to Thisayanvilai Police Station. On receipt of FIR from Nanguneri Police Station, on the point of jurisdiction, P.W.6 had registered a case in Crime No.47 of 2007, for the complaint of P.W.1; P.W.7 is the Inspector of Police, who, on receipt of FIR, visited to the scene of occurrence, examined the witnesses, prepared observation mahazar / Ex.P4; rough sketch / Ex.5 and arrested A1, on 17.03.2007. Thereafter, on his transfer, P.W.8 had taken up the investigation from 15.12.2009. He had concluded the investigation and filed the charge sheet on 21.05.2010.

7. The contention of the appellants is that P.W.1 is the estranged wife of A1. The marriage between them had taken place on 05.12.2003 and out of the marriage, they have two children. Initially, they were living separately, thereafter, they joined the family of A1 and living with A2, the mother of A1, which was not to



the liking of P.W.1, she usually pick up quarrel for trivial matters, to find reason to go back to her parents' place and this has been her normal pattern. On one such occasion, she had lodged a complaint to the Police, as though there was demand of dowry, her gold jewels have been pledged, some were given to A3 and P.W.1 was subjected to cruelty.

8. The Police called both P.W.1 and A1, advised P.W.1 to join with her husband, on their advise, on 09.03.2007, P.W.1 along with her parents went to the house of A1, her parents stood outside the house. As soon as P.W.1 entered into the house, A1 caught hold of her by hair, A2 shouted at P.W.1 stating that she is the reason for all the disgrace to the family and asked A3 to get the kerosene can to set her ablaze. A3 brought the kerosene and handed over to A1, who poured kerosene on P.W.1 P.W.1 pushed A1, fearing for life, shouted and ran out and thereafter, she along with her parents, came to her house. She had lodged a complaint thereafter only on 15.03.2007. No reasons had been given for 6 days delay in lodging the complaint. Further, the witness to the observation mahazar and rough sketch have not supported the case of the prosecution. From Ex.P4 observation mahazar, it could be clearly seen that there is no mention of any availability of kerosene can in the scene of occurrence. At the end of Ex.P4 observation mahazar, it is seen that there is an interpolation of "சம்பவ இடத்தில் மண்ணெய் சிதறி கிடக்கிறது நாற்றம் உள்ளது".

9. It is surprising to note that the alleged occurrence is said to have taken on 09.03.2007 and the observation mahazar had been prepared on 15.03.2007 whether at all it would be possible for presence of kerosene and the emission of smell. Further, P.Ws.3 and 4 witness for observation mahazar have not supported the case of the prosecution. Likewise, there is no mention with regard to presence of kerosene, as could be seen from Ex.P5 / rough sketch. It is also submitted that there is no materials like saree or any other materials produced by P.W.1 or seized to show that kerosene was poured on her. Even no kerosene can has been seized in this case. The admitted case is that P.W.1 had not sustained any injury and she was not referred to any Doctor. It is except for her oral statement, no other witness or materials to show that kerosene was poured on her, by the accused. P.W.5 is the Sub-Inspector of Police, who state that on 15.03.2007, she had received the complaint and registered the FIR. Thereafter, the FIR had been forwarded to Thisayanvilai where P.W.6 had received the same and registered another FIR.

10. The Inspector of Police had admitted that they have not collected any material produced by P.W.1 showing that kerosene was poured on her and there is no explanation for the delay in lodging the complaint. Likewise, it could be seen that though FIR registered on 15.03.2007, it had reached the Court on 20.03.2007 five days. It is further stated that Exs.P1 and P2



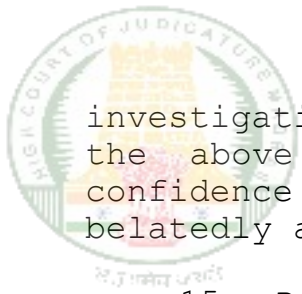
had been sent to Judicial Magistrate Court on 15.03.2007 and Ex.P3 had reached the Court on 20.03.2007. Exs.P1 and P2 were sent to the District Munsif-cum-Judicial Magistrate, Nanguneri and Ex.P3 had been forwarded to Judicial Magistrate, Valliyoor. The Investigating Officer has not given any explanation for the same. The observation mahazar, rough sketch had reached the Court on 09.12.2010, along with the charge sheet. Hence, it is stated that the appellant has been falsely implicated in this case and prayed for acquittal.

11. On the contrary, the learned Government Advocate (crl.side) submitted that in this case, P.W.1 is the victim, who was attempted to be set ablaze by the accused on 09.03.2007. Thereafter, she had approached the Police on 15.03.2007. On receipt of her complaint, Ex.P1, FIRs, / Ex.P2 and P3 came to be registered. Thereafter, investigation was taken up by P.W.7, who visited the scene of occurrence, prepared observation mahazar, rough sketch and recorded the statement of witnesses and on her transfer, P.W.8 had taken up the investigation, collected the documents, examined the witnesses and thereafter, filed the charge sheet in this case. The trial Court, on appreciation of evidence and witnesses had rightly convicted the accused, which need not be interfered with.

12. The Court heard the submissions of the learned counsels appearing on either side and perused the materials available on record.

13. On perusal of the materials it is seen that the alleged occurrence taken place on 09.03.2007, on that day, the appellants were inside the house. P.W.1 came out, running crying for help. The parents of P.W.1 namely, P.W.2 had not approached the police immediately. It is to be seen that on 09.03.2007, P.W.1 was advised by the police to go to the house of the accused and join him and it is surprising and unable to comprehend how after the attempt on her life, she or her parents had not approached the same Police, to inform about the incident. Further, there is no reason given by P.W.1 or P.W.2 why the complaint was lodged 6 days after the incident and the Police, who had visited the occurrence, on 15.03.2007, could not find any materials or seize any article to show that there was kerosene available in the house. The Interpolation seen in Ex.P4 is apparent. Further, P.Ws.3 and 4 have not supported the case of the prosecution.

14. Further, in this case, P.W.1 was not referred to the hospital to find out any emission of kerosene smell or any reminisce available on her body. P.W.1 failed to produce the saree, which she wore when the kerosene was poured on her and no reason has been given by her for not producing the same. It is to be seen that P.W.1 states she along with her 8 months' old baby and another child went to the house of the accused on 09.03.2007. But, P.W.2, mother gives a different version. The evidence of P.Ws.1 and 2 are



investigation. The only evidence available is that of P.W.1. For the above said reasons, the evidence P.W.1 does not inspire confidence to act upon. All the documents have reached the Court belatedly and no reason has been given for the same.

15. During pendency of the appeal, the appellant/husband as well as the defacto complainant had appeared before this Court and the appellant/husband had filed an affidavit, who had voluntarily gave Rs.3,00,000/- for the welfare of the children, of which Rs.1,35,000/- each, totally Rs.2,70,000/- has been deposited in the name of his daughters, viz., S.Kiruba and S.keerthi, for their welfare, by way of Fixed Deposit in "0.1722, Iraippuvaripatterpuram Primary Agricultural Co-operative Credit Society Ltd.," on 27.12.2019. Rs.30,000/- was used to meet out the loans of the defacto complainant. Further, P.W.1 had filed Maintenance Case in M.C.No.6 of 2007 and there was an arrears of Rs.1,10,000/- in the Maintenance Case. This amount was handed over to P.W.1 and P.W.1 had acknowledged the same. Further, as per the affidavit and understanding, the appellant/husband agreed to pay Rs.2,000/- per month towards maintenance without default to P.W.1 and his children.

16. This Court, considering all the above facts and circumstances of the case, comes to the conclusion that the prosecution has not proved its case against the accused. In view of the same, the Criminal Appeals are allowed and the appellants are acquitted from all charges. The bail bond executed by the appellants shall stand cancelled and would be set at liberty.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

To

- 1.The Sessions Judge / Mahila Court,
Tirunelveli i
- 2.The Judicial Magistrate, Nanguneri.
- 3.Do through The Chief Judicial Magistrate,
Tirunelveli District.



4.The Superintendent, Central Prison, Palayamkottai.

5.The Superintendent, Central Prison, Trichy.

6.The Inspector of Police, Thisayanvilai Police Station
Tirunelveli District

7.The Inspector of Police, Villupuram Town Police Station,
Villupuram.

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

Copy to:

The Record Clerk, (2 Copies)

Criminal Record Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C.ARULVADIVEL@SEKAR, Advocate (SR-4486[F] dated
03/02/2020)

Judgment made in
Crl.A(MD)Nos.316 & 319 of 2014
07.02.2020

JMN(19.02.2020) 7P : 12C