



BAIL SLIP

Criminal Appeal No.123 of 2016

The Appellant / Accused (viz) A.Sekar S/o.Arumugam was released on bail as per the order of this court dated 16.02.2016 in Crl.M.P.No.1733 of 2016 in Crl.A.No.123 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.123 of 2016

A.Sekar

...Appellant/Sole Accused

..Vs..

State by Inspector of Police,
Kudavasal Police Station,
(Crime No.205/2014)
Thiruvarur District.

..Respondent/Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the order and judgment dated 25.09.2015 passed by the Sessions Judge, Fast Track Court, Magalir Neethimandram, Thiruvarur in S.C.No.133/2014 on his file and acquitting the appellant of the charge under Section 498-A of I.P.C.

For Petitioner : Ms.N.Alamelu Mangai

For Respondent : Mr.R.Vinoth Raja
Government Advocate (Crl.Side)

JUDGMENT

The convicted sole accused is the appellant herein.

2. Challenging the correctness of the conviction and the sentence passed by the trial Court under Section 498 (A) I.P.C., this appeal is filed.

3. While the respondent police filed the charge sheet for



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alleged offences under Sections 306 and 498 (A) of I.P.C., after trial, he was acquitted of the charges under Section 306 I.P.C. however he was convicted under Section 498 (A) I.P.C. and sentenced to undergo Rigorous Imprisonment for two years and pay a fine of Rs.1000/-

4. The respondent/police filed final report alleging that the accused and deceased are husband and wife. On 16.06.2014 at about 15.00 hours the accused assaulted the deceased by suspecting her character. So, the deceased told her husband that "it is better to die, than live with the accused". The accused replied that if the deceased dies, then only he will have peace and shouted "go on die". Due to the above instigation by the accused, under frustration, the deceased poured kerosene on herself, set fire and in result, she died. Therefore, the accused appears to have committed offences punishable under Sections 306 and 498-A of I.P.C.

5. The learned Judicial Magistrate, Tiruvarur, taken the case on file in PRC.No.35/2014. Accordingly, he has committed the case to the Principal Sessions Judge, Tiruvarur. The Principal Sessions Judge, Tiruvarur, in-turn, made over this case to trial Court for trial of the case with respect to charges laid against him under Sections 306 of I.P.C and 498-A I.P.C.

6. The charges were framed against the accused under Sections 498(A) and 306 I.P.C.

7. To prove the charge laid against the accused under Section 498(A), 306 I.P.C., on the side of the prosecution, the witnesses P.W.1 to P.W.11 were examined and Exs.P1 to P12 were marked. No material objects were marked.

8. During the trial, P.W.1 is the brother of the accused, turned hostile. P.Ws.2 and 3, are neighbours residing in the place of the accused, have also turned hostile. The attester of the observation mahazar was examined as P.W.5. The learned Judicial Magistrate, who recorded the dying declaration Ex.P4 was examined as P.W.6. While P.W.7 Doctor had given Ex.P5 Fitness Certificate, for recording the dying declaration and P.W.8 Doctor who has conducted the post-mortem, issued Ex.P6 Post-mortem certificate and P.W.10 is the Doctor who had admitted the deceased at the first instance and noted down the burn injuries. The trial Court, after trial held that charge under Section 306 I.P.C is not made out, however charge under Section 498 (A) I.P.C is made out and accordingly, convicted and sentenced the accused as stated supra.

9. The case of the prosecution is that, the accused and



deceased are husband and wife. On 16.06.2014 at about 15.00 hours, the accused assaulted the deceased by suspecting her character. So, the deceased told her husband that "it is better to die, than live with the accused". The accused replied that, if the deceased dies then only he will have peace and shouted as "go on die". Due to the above instigation by the accused, under frustration, the deceased poured kerosene on herself and set fire and in result, she died.

10. The learned counsel for the appellant/accused contended that P.W.1 to P.W.3 have turned hostile and they didn't support the prosecution case. The deceased sustained 60% of burn injuries and she was not conscious and fit to depose before the Magistrate. The dying declaration is not supported by any other witnesses. There is no corroboration to the dying declaration of the deceased. Further, there is no incriminating statement in the dying declaration to make out offences under Section 498 (A) and 306 I.P.C. The learned counsel particularly stated that there is no evidence to prove that the accused intended to commit the death of the deceased. Hence, he prayed for acquittal of the accused for the charges laid against him.

11. In reply, the learned Government Advocate appearing for the respondent (Crl.Side) has submitted that the accused assaulted the deceased by suspecting her character. Due to that, the deceased committed suicide by setting fire on herself. The deceased made a dying declaration before the learned Judicial Magistrate. The Doctor evidence are clear that the deceased was conscious and was in fit state of mind at the time of recording the dying declaration. The dying declaration is proved by the prosecution. Although, the other witnesses P.W.1 to P.W.3 turned hostile, the evidence of P.W.4 supported the prosecution case. Further, the dying declaration of the deceased alone is sufficient to convict the accused. Hence, the learned counsel for the Government Advocate (Crl.Side) prayed for convicting and sentencing the accused for the charges framed against him under Section 498(A) and 306 I.P.C.

12. As stated supra, P.W.1 brother of the accused turned hostile. P.W.2 and P.W.3 are also turned hostile. P.W.10 Doctor who admitted the deceased at hospital had stated that the deceased herself poured kerosene and she sustained burn injuries in chest and stomach (front and back) and sustained 16% of the brain injuries and Accident Register copy is marked as P10. P.W.6 Judicial Magistrate who recorded the dying declaration of deceased, deposed regarding discharge of official duty and observation of the formalities thereon.

13. As per Ex.P6 post-mortem certificate issued by P.W.8 Doctor, the deceased had died due to the burn injuries and hence



the deceased Chitra w/o.A.Sekar, died to the burn injuries and it is a case of suicide. As all the private prosecution witnesses have turned hostile, the case is solely rested upon Ex.P4 dying declaration recorded by P.W.6 Judicial Magistrate.

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14. On a perusal of Ex.P4 dying declaration, I do not find the element of demand of dowry nor an inducement or abetment the wife to commit suicide. The substance of the dying declaration is to the effect that there was a quarrel for 10 days between the deceased and her husband (accused). She alleged that her husband has suspected her. As on the fateful day, there was a quarrel between them and hence the husband has assaulted her and said a word deformity as stated in the sudden movement in fit of anger and she poured kerosene and set herself a fire.

15. The accused/husband has admitted the deceased in the hospital with burn injuries, as could be seen from Ex.A10 Accident Register and the same is spoken to P.W.10 Doctor.

16. After perusal of the dying declaration in Ex.P4 coupled with the oral evidence of P.W.10 Doctor, I find that there is no abatement to commit suicide. Even if husband uttered 'go on die', it will not be construed as a abatement or inducement for the wife to commit suicide. Going by the statement recorded by the Judicial Magistrate P.W.6 in Ex.P4 dying declaration, it is clear that in a fit of anger and the quarrel between the husband and wife in connection with domestic quarrel fight between the child of a neighbour, she poured kerosene and set fire on herself.

17. It appears that in a fit of anger at the spur of the moment, the deceased committed suicide. Hence, the learned Session Judge has rightly acquitted the accused under Section 306(ii) I.P.C. However the trial Court had chosen to convict him under Section 498 (A) of I.P.C. Based upon the evidence of P.W.1 to P.W.4, there is nothing on record to show that there was a demand of dowry or any physical or mental cruelty. The cruelty alleged by the deceased in the dying declaration does not amount to cruelty and it is only fit of anger between them and that due to the petty quarrel between the husband and wife, she has committed suicide.

18. Further, the wife slapping the child of the neighbour, cannot be treated as harassment and hence I find that the conviction and sentence under Section 498 (A) I.P.C is unsustainable in law and the same is hereby set aside and he is acquitted of charge under Section 498-A I.P.C.

19. Accordingly, this Criminal Appeal is allowed. The order



of conviction and sentence passed by the trial Court are set aside. The fine amount if paid by the accused, shall be refunded. The bail bond, if any, executed by him, shall stand cancelled.

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Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, Fast Track Court,
Magalir Neethimandram, Thiruvarur.
2. The Judicial Magistrate,
Tiruvarur.
3. The Superintendent,
Central Prison, Trichy.
4. The District Collector,
Tiruvarur District,
Tiruvarur.
5. The Director General of Police,
Mylapore, Chennai - 4
6. The Public Prosecutor,
High Court, Madras.
7. The Inspector of Police,
Kudavasal Police Station,
Tiruvarur District.
8. The Section Officer,
Criminal Section,
High court, Madras.

+1cc to Mr.S.Nethaji, Advocate, S.R.No.34149

Cr1.A.No.123 of 2016

SMI(CO)
RGA(17/08/2021)