



Bail Slip

The Appellant/Sole Accused K.Packiyaraj S/o.Krishnamoorthi was directed to be released on bail by order of this Court dated 20.06.2016 and made in CRL MP(MD)No.3005 of 2016 in CRL A(MD)NO. 115 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
JUDGMENT RESERVED ON : 15.07.2021
JUDGMENT PRONOUNCED ON : 29.10.2021

CORAM:

HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**
Crl.A. (MD) No. 115 of 2016

K.Packiyaraj
S/o.Krishnamoorthi : Appellant

-vs-

The State through
The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai.
(Crime No.128 of 2006) : Respondent

PRAYER:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the Judgment delivered by the Hon'ble Sessions Judge, Mahalir Fast Track Court, Sivagangai, in S.C.No.41 of 2009, dated 21.12.2015 and acquit the petitioner/accused.

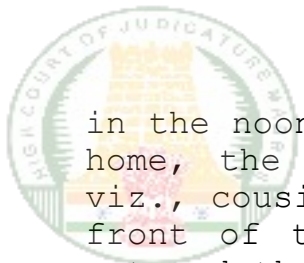
For Appellant : Mr.R.Sevugaraja
For Respondent : Mr.K.Sanjay Gandhi
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been filed against the Judgment and Conviction dated 21.12.2015 by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai in S.C.No.41 of 2009.

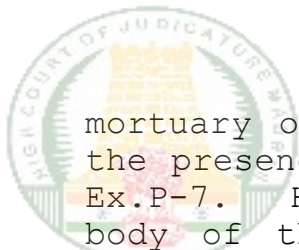
2. The brief facts, which are relevant for consideration of this appeal, as per the prosecution case, are as follows:

2.1.The deceased Surya, aged about 16 years, was a physically challenged girl (left leg was affected due to accident). P.W-1-Kalaiselvi is her mother. P.W-2-Kannadasan is her father. P.W-3-Malairaj is her paternal uncle. P.W-4-Jeyasudha is the wife of P.W-3. P.W-5-Moorthy is a neighbour and distant relative. P.W-1 and P.W-2 are working as daily wage earners. As per the prosecution case, on the date of occurrence, i.e., on 23.04.2006 at about 12.30



in the noon when the victim/daughter of P.W-1 and P.W-2 was alone at home, the accused herein Packiyaraj who is also a paternal uncle viz., cousin to the father of the deceased victim, had abused her in front of the house of the victim and P.W-1, P.W-2 and P.W-3 and entered the house where the victim was alone at home and pulled her by hand with an intention to outrage her modesty. She protested. At that time, P.W-3 was available there and hence, the victim complained to P.W-3. He consoled her that he will inform his brother-P.W-2- father of the victim when he returns from work. While so, unable to bear the mental pain and shameful conduct of the accused, she had poured kerosene over her and set her on fire. Hearing her cries for help, P.W-3 and P.W-5 who were available in the vicinity of the house of P.W-1 and P.W-2 came running to her rescue. They had covered her with a thick blanket and rolled her over on the floor. In the meanwhile, message was sent to her parents P.W-1 and P.W-2 who were in the field nearby. Therefore, P.W-1 and P.W-2 returned home. In the meanwhile, a taxi was engaged by the neighbours. The taxi was driven by P.W-6-Suresh and they had taken the injured to the Government Medical College Hospital, Sivagangai. On reaching the hospital, P.W-7-Dr.Mahadevan had seen the victim. She had suffered 100% burns and she was not conscious. P.W-7 Doctor issued Wound Certificate under Ex.P-4. Thereafter, he had given intimation to Taluk Police Station, Sivagangai. On receipt of information from the Government Medical College Hospital, Sivagangai, P.W-9-Kannathal, the then Woman Sub Inspector of Police, who was on duty at Sivagangai Taluk Police Station, rushed to the Government Medical College Hospital, Sivagangai. By the time P.W-9-woman Sub Inspector reached the hospital, the victim was dead. By that time, the parents of the victim, P.W-1 and P.W-2 were available in the female ward of the Government Medical College Hospital, Sivagangai. Therefore, P.W-9-Woman Sub Inspector had obtained oral complaint from the mother of the deceased victim girl which was taken down in writing by the woman Sub Inspector as complaint under Ex.P1. On return to the Sivagangai Taluk Police, she registered FIR under Ex.P-6 in Crime No.128 of 2006 for offences under Section 306 of IPC and Section 4 of the Tamil Nadu Prevention of Harassment to Women Act against accused. The original complaint under Ex.P-1 and the original FIR under Ex.P-6 were sent to the Court of the learned Judicial Magistrate, Sivagangai. She had arrested the accused and forwarded the accused for remand along with remand request. She had sent the copy of the complaint under Ex.P-1 and FIR under Ex.P-6 to the higher officials of the police department including P.W-10-Rajendran-Inspector of Police, Taluk Police Station, Sivagangai.

2.2.On receipt of the complaint under Ex.P-1 and FIR under Ex.P-6, P.W-10-Inspector of Police had proceeded to the place of occurrence viz., the house of the deceased and P.W-1 and P.W-2 and prepared Observation Mahazar under Ex.P-2 and Rough Sketch under Ex.P-8. He had visited the Government Medical College Hospital, Sivagangai and conducted inquest on the body of the deceased in the



mortuary of the Government Medical College Hospital, Sivagangai in the presence of the Panchayatdars and prepared inquest report under Ex.P-7. He had issued requisition letter seeking autopsy on the body of the deceased. Accordingly, P.W-7 himself had conducted postmortem on the body of the deceased and issued postmortem certificate under Ex.P-3. He had recorded the statement of the Doctor who conducted the postmortem and as per the deposition of the Doctor, the deceased died due to 100% burns. On completion of the investigation he laid final report of the investigation before the Court of the learned Judicial Magistrate No.II, Sivagangai.

2.3.On taking the final report of the investigation under Section 173 of Cr.P.C., the learned Judicial Magistrate No.II, Sivagangai, had taken cognizance of the offence under Section 306 of IPC and Section 4 of Tamil Nadu Prevention of Harassment to Women Act. He had issued summons to the accused. On appearance of the accused, the learned Judicial Magistrate No.II, Sivagangai, had furnished copies to the accused under Section 207 of Cr.P.C. and examined the accused whether the accused had resources to engage a counsel to defend himself effectively in the trial, the accused submitted that he had resources. Therefore, the case records in P.R.C.No.21 of 2009 was committed to the Principal Sessions Judge, Sivagangai. The accused was bound over to the Court of the learned Principal Sessions Judge, Sivagangai. On appearance of the accused, the learned Principal Sessions Judge had numbered the sessions case as S.C.No.41 of 2009 and made over the case to the Court of the learned Chief Judicial Magistrate, Sivagangai and bound over the accused to the Court of the learned Chief Judicial Magistrate, Sivagangai. On appearance of the accused, the learned Chief Judicial Magistrate, on perusal of the records and after hearing the prosecution and the defence counsel, had framed charges against the accused under Sections 305 and 294 (b) of IPC and Section 4 of the Tamil Nadu Prevention of Harassment to Women Act. The accused pleaded not guilty to the charges and claimed to be tried. Therefore, trial was ordered. During trial, the prosecution had examined witnesses P.W-1 to P.W-10 and marked documents Ex.P-1 to Ex.P-8.

2.4.After completion of the evidence of the prosecution, the accused was examined regarding incriminating evidence available against him through P.W-1 to P.W-10. The accused denied the incriminating evidence against him. The learned Sessions Judge, Sivagangai, by his judgment dated 21.12.2015 convicted the accused and sentenced him to undergo Rigorous Imprisonment for ten years and to pay fine of Rs.5,000/-, in default, to undergo six months simple imprisonment. The period already undergone in detention by the accused was set off under Section 428 of Cr.P.C.



3. Aggrieved by the judgment of conviction and sentence of rigorous imprisonment of 10 years under Section 305 of IPC and to pay fine of Rs.5,000/-, the accused had preferred this appeal.

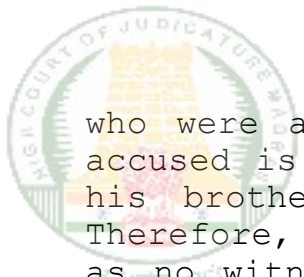
4. It is the contention of the learned Counsel for the appellant/accused that the case had been foisted against the appellant. The accused is a relative of P.W-2 and P.W-3 and there had been a property dispute between the family of the accused and the family of the father of the deceased victim girl. Therefore, using the death of the victim girl as a ploy, the parents of the deceased girl and the paternal uncle -P.W-3 had foisted a false case. The learned Sessions Judge, Sivagangai had convicted the accused without considering the evidence available through the cross-examination of P.W-1 to P.W-5. Therefore, the judgment of conviction and sentence of imprisonment imposed on the accused is perverse. Therefore, the judgment dated 21.12.2015 has to be set aside and the accused is to be acquitted.

5. Mr.K.Sanjay Gandhi, learned Government Advocate (Crl. Side) appearing for the respondent had submitted that there is the case the prosecution had proved the charges against the accused through the evidence of P.W-1 to P.W-10 and Ex.P-1 to Ex.P-8. There is nothing found perverse in the judgment of the learned Sessions Judge, Sivagangai. The appeal lacks merits and the same has to be dismissed.

6.The point for consideration:

Whether the judgment of conviction and sentence of imprisonment recorded against the accused by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, in S.C.No.41 of 2009, dated 21.12.2015, is to be set aside as perverse and accused to be acquitted?

7. On perusal of the evidence available through P.W-1 to P.W-10 and the postmortem report under Ex.P-3 and FIR under Ex.P-6, it is found that by the time the parents of the deceased came to the scene of occurrence, P.W-3 and P.W-5 had already taken the injured victim to the hospital and by the time the parents reached the hospital, she was in the female ward. P.W-7-Doctor who had seen the burnt victim at the earliest point of time in hospital had in his deposition stated that she was not conscious and not in talking terms as she had suffered 100% burns. Therefore, he had intimated the case of the victim to the Taluk Police Station, Sivagangai. Based on which, P.W-9 had reached the hospital and on reaching the hospital, the victim was already dead. Therefore, she had obtained oral complaint from the mother of the deceased based on the hearsay mentioned to her by P.W-3 Malairaj. The alleged allegation against the accused came to be recorded through the mouth of P.W-3 and P.W-5



who were at the relevant time on the spot. The defence of the accused is that there is a dispute between the family of P.W-3 and his brother viz., the father of the deceased and the accused. Therefore, wantonly his name had been implicated is found reasonable as no witness had stated that the accused herein had attempted to misbehave with the victim who is none other than the daughter of the elder brother of P.W-3. If P.W-3 was available in the scene of occurrence, he could have thrashed the accused. If the theory of the victim girl complaining about the accused is to be accepted, then, P.W-3 himself is culpable for the same as due to his inaction she felt helpless and victimised. The allegation made out against the accused by P.W-1 and P.W-2 are based on the statement of P.W-3. If that is to be believed, then P.W-3 is also an accused for his inaction. A girl aged about 16 years is not expected to set fire to herself on the slightest pretext of abuse by her relative and due to attempt to outrage her modesty. P.W-3 and P.W-4 are relatives and they were available in the scene of occurrence as per their statements. If that had been the case, they could have thrashed the accused but they have not done so. The defence of the accused is found reasonable considering the evidence of P.W-1, P.W-2, P.W-3 and P.W-4 who are all related to each other. If what had been stated by P.W-3 is to be believed, then he is also a culprit for his inaction for the helpless girl who had committed suicide. The said theory is unbelievable. What is the original case is not available because the alleged victim was dead on arrival at hospital as she had suffered 100% burns. Therefore, based on the hearsay, P.W-1 had given the oral complaint and hence, the evidence assessed by the learned Sessions Judge is found to be unreasonable. There are contradictions in the evidence of P.W.1 and P.W-2 who are the parents of the deceased and as per their deposition, they had spoken to their daughter, which is unbelievable considering the fact that the victim girl who suffered 100% burns, who had brought by P.W-3 and P.W-5, who had taken her to hospital. Therefore, the judgment of conviction recorded by the learned Sessions Judge, Sivagangai is found perverse. Therefore, the same is to be set aside.

8.The guidelines issued by the Hon'ble Supreme Court regarding appreciation of evidence by the Appellate Court that the Appellate Court shall not interfere with the findings recorded by the learned trial Judge, as the trial Judge had the benefit of observing the demeanour of witnesses is not applicable in this case as the cross examination of the witnesses P.W-1 to P.W-5 was recorded by me as the then Chief Judicial Magistrate, Sivagangai. The witnesses were recalled for cross-examination after a long time. I, as the then Chief Judicial Magistrate, Sivagangai, had recorded the cross-examination of the witnesses found that there were contradictions. When the Doctor says that the victim was not conscious and not speaking, the evidence of P.W-1 who was not in the scene of occurrence claiming that her daughter informed her that she committed self-immolation as the accused had abused her and caught



her by hand with an evil intention, is found unbelievable, particularly, when P.W-7 Doctor had seen the victim at the earliest point of time with 100% burns. Only P.W-7 had given intimation to the Sivagangai Taluk Police Station that the victim died. Therefore, the reason for the death of the minor girl is not known to the Court. The reasons as put out by P.W-1, P.W-2, P.W-3 and P.W-4 are found to be unbelievable as the accused being a member of their family, a cousin of P.W-2 and considering the fact that there had been dispute in the family regarding property. Therefore, the finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, convicting the accused under Section 305 of IPC is found perverse warranting interference by this Court.

9.The point for consideration is answered in favour of the appellant/accused and against the prosecution. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, in S.C.No.41 of 2009, dated 21.12.2015 is perverse.

In the result, this appeal is allowed.

The finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, in S.C.No.41 of 2009 and the conviction and sentence imposed under Section 305 of IPC are set aside. The bail bond executed by the appellant, if any, shall stand discharged. The fine amount paid, if any, shall be refunded to the appellant.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

SRM

To

1.The Sessions Judge,
Fast Track Mahila Court,
Sivagangai.

2.The Judicial Magistrate No.II,
Sivagangai.

3.The Chief Judicial Magistrate,Sivagangai.

4.The Superintendent,
Central Prison,
Trichy.

<https://hcservices.ecourts.gov.in/hcservices/>



5.The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai.

6.The Sub Inspector of Police,
Thondi Police Station,
Ramanathapuram District.

7.The Government Advocate(Crl Side),
Madurai Bench of Madras High Court,
Madurai.

8.The Section Officer,
Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai.

Crl.A. (MD) No. 115 of 2016
29.10.2021

MGJ(22.02.2022) 7P 10C