

Bail Slip

That the Appellant/Accused namely Jaffer Ali was directed to be released on bail by order of this Court dated 22.11.01 in Crl.MP.No.7496/01 in Crl.A.NO.1006/01.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2005

C O R A M :

THE HONOURABLE MR.JUSTICE N.DHINAKAR  
AND  
THE HONOURABLE MR.JUSTICE A.KULASEKARAN

CRL.A.NO.1006 of 2001

Jaffar Ali ... Appellant

-vs-

State rep.by the Inspector of  
Police, Mettupalayam Police  
Station. (Crime No.1148/95) ... Respondent

PRAYER : Appeal against the conviction and sentence imposed by the learned II Additional Sessions Judge, Coimbatore, dated 04.3.1999 made in S.C.No.161 of 1997.

For appellant :: Mr.N.Ishtiaq Ahmed  
For respondent :: Mr.M.K.Subramanian,  
Government Advocate (crl.side)

J U D G M E N T

(JUDGMENT OF THE COURT WAS DELIVERED BY N.DHINAKAR, J.)

The accused appeals.

2. The appellant, who is the sole accused in Sessions Case No.161 of 1997 on the file of the learned II Additional Sessions Judge, Coimbatore, stands convicted on a charge of murder. The allegation against him in the said charge is that at 11.30 p.m. on 18.11.1995, on account of a quarrel with his wife Jeenath Nisha, he threw a lighted chimney lamp on her and that on account of it, she sustained burn injuries and died on 11.12.1995 at 4.30 p.m. at the Government Hospital, Mettupalayam, where she was undergoing treatment. The learned trial Judge, finding the appellant guilty, sentenced him to undergo imprisonment for life. Hence, the appeal.

3. The facts can be briefly stated as follows:-

The deceased is the wife of the appellant and P.W.2 is the elder brother of the deceased. P.W.3 is the daughter of the deceased and the appellant and P.W.4 is the son of the deceased and the appellant. The appellant and the deceased were married about 10 years prior to the date of incident. The appellant used to take drinks and there used to be quarrels between him and his wife Jeenath Nisha, who is the deceased in this case. The deceased used to go to her parents house and she used to be sent back to her matrimonial home after pacification. P.W.2 used to give her money. While the deceased and the appellant were residing at Flower Market at Coimbatore for about three months, the neighbours complained to the family members of the deceased that the appellant is harassing and beating his wife. They also advised the family members of Jeenath Nisha to take her back from the appellant's house. While the matter stood thus, at about 11.30 p.m. on 18.11.1995, P.W.1, a neighbour was informed by Geetha, another neighbour of the appellant, that Jeenath Nisha has sustained burn injuries and she must be removed to the hospital. Thereafter, the appellant, P.W.1 and Geetha took Jeenath Nisha to a private nursing home, but as there was no doctor, she was taken to the Government Hospital, Tiruppur, where she was examined by P.W.8, the Medical Officer, at 1.15 a.m. She was admitted as an in-patient. After the admission of Jeenath Nisha, the Medical Officer sent an intimation, Ex.P.5 to the police authorities at Mettupalayam Police Station. He also sent a requisition, Ex.P.3, to the Magistrate to go over to the hospital to record the statement of the injured Jeenath Nisha.

4. On receipt of Ex.P.3, requisition from the medical authorities, P.W.7, the learned Judicial Magistrate, Mettupalayam, went to the hospital on 19.11.1995 and between 11.05 a.m. and 11.30 a.m. he recorded the statement given by the injured Jeenath Nisha. The said statement stands marked as Ex.P.4.

5. On receipt of Ex.P.5, intimation from the Government Hospital, Mettupalayam, P.W.12, the Sub-Inspector of Police, Mettupalayam Police station, proceeded to the Government Hospital and at 2.00 a.m. on 19.11.1995, recorded the statement given by the deceased Jeenath Nisha. The said statement stands marked as Ex.P.13. P.W.12 returned to the police station and on the basis of the statement, Ex.P.13, he registered a case in Crime No.1148 of 1995 under Section 307, IPC. Ex.P.14 is a copy of the printed First Information Report. Investigation in the crime was taken up by one Chandramohan Babu, the Inspector of Police, Mettupalayam Police Station and as he died pending trial, the investigation conducted by him was spoken to by P.W.13, the Inspector of Police, who knew the hand-writing and the signature of the said Chandramohan Babu.

6. Chandramohan Babu, the Inspector of Police, Mettupalayam Police station, on taking up investigation in the crime, proceeded to the Government Hospital, Mettupalayam at 4.00 a.m. and recorded the statement of Jeenath Nisha. He reached the scene of occurrence at 7.00 a.m. and in the presence of P.W.5 and another, prepared an observation mahazar, Ex.P.1 and drew a rough sketch, Ex.P.15. He seized M.Os.1 to 7 under a mahazar, Ex.P.2 attested by witnesses. He examined P.Ws.1, 2 and 5 and recorded their statements. They were forwarded to the Court under Form 95. The appellant was arrested at about 8.00 a.m. on 21.11.1995 and he was sent to Court for remand. On receipt of the death intimation, Ex.P.16, that Jeenath Nisha died at about 4.30 p.m. the crime was altered to one under Section 302, IPC and Ex.P.17 is the express report in the altered crime. Thereafter, between 5.00 p.m. and 8.00 p.m. inquest over the dead body was conducted at the hospital by Chandramohan Babu and Ex.P.18 is the Inquest Report. After the inquest, the requisition, Ex.P.6 was issued by him to the doctor to conduct autopsy and the body was handed over to P.W.10, the police constable.

7. On receipt of the requisition, Ex.P.6, P.W.9, the Civil Assistant Surgeon attached to the Government Hospital, Mettupalayam, conducted autopsy and found the following injuries:-

Appearances found at the post-mortem:-

Moderately nourished body of a female skin burnt with superadded infection greenish slough all over the burnt skin. Foul smelling. RM present in all four limbs. Jaw clenched. Teeth within the mouth.

Internal Appearance:-

Hyoid Bone - Intact.

Thorax:- Lungs:- Congested and brownish.

Heart:- Pericardium congested. Heart had 100 ml clotted blood.

Abdomen: Stomach contained 50 - 100 ml partially digested food particles. Congested.

Spleen: Congested.

Liver: Congested.

Intestines: Congested.

Genitalia: Burnt and supra added infection - greenish and foul smelling.

Skull: Cavity, membranes, brain - normal.

The doctor issued Ex.P.7, the Post-mortem Certificate with his opinion that the deceased would appear to have died due to burn injuries.

8. Chandramohan Babu, continuing with his investigation, forwarded the material objects to the Court on 14.12.1995, with a

requisition, Ex.P.8 to send them for chemical analysis. On 19.11.1995, he examined the doctor, P.W.8, who initially treated the deceased Jeenath Nisha and recorded his statement. On the same day, he examined P.W.9, the doctor who conducted autopsy and recorded her statement. On 11.12.1995, P.Ws.3 and 4 were examined and their statements were recorded. After the completion of investigation, the final report was filed against the appellant on 30.4.1996.

9. When the appellant was questioned under Section 313, Cr.P.C. on the incriminating circumstances appearing against him, he denied all the incriminating circumstances and stated that it is a false case.

10. The learned counsel appearing for the appellant submits that Ex.P.5 will indicate that the deceased Jeenath Nisha suffered burn injuries on account of accidental fire and, therefore, the appellant is entitled for an acquittal.

11. We have heard the learned Government Advocate (criminal side) on the above contention.

12. The cause of death of Jeenath Nisha stands established through the evidence of the doctor, P.W.9, who conducted autopsy on the dead body. It is also not in dispute that Jeenath Nisha died on account of burn injuries. Therefore, there can be no doubt about the cause of death of Jeenath Nisha.

13. The question that is to be decided by us is whether the burn injuries suffered by Jeenath Nisha were due to accident or on account of the deceased being set ablaze by the appellant. P.Ws.3 and 4, the daughter and son of the deceased respectively, who were in the house at the time of occurrence, have been examined as witnesses to the occurrence. But the trial Court did not record the evidence of P.W.4 on the ground that he is too young to be examined as a witness, as he was not able to answer the questions put to him by the Court, and since he was not even able to identify which is good and which is bad. The only witness whose evidence was recorded is P.W.3. P.W.3, in her evidence, has stated that on the date of incident, the appellant threw a lighted chimney lamp at her mother, on account of which, she suffered burn injuries and that she was removed to the hospital. On going through the evidence of P.W.3, we find that her evidence is satisfactory and nothing was elicited from her to show as to why she should give false evidence against her own father. Therefore, it is clear that the deceased suffered burn injuries on account of the appellant throwing a lighted chimney lamp. We, therefore, hold that the deceased suffered burn injuries on account of the act of the appellant in throwing a lighted chimney lamp on her.

14. The final question that is to be decided by us is the nature of the offence committed by the appellant. P.W.3 in cross-examination has stated that the appellant did not throw the burning chimney lamp at her mother with a view to commit the murder of her mother. Ex.P.5, intimation also shows that the doctor was informed that the deceased suffered burn injury in fire accident. The evidence of P.W.3 even in chief-examination, that the appellant threw the lighted chimney lamp and the answer given by her in the cross-examination that the appellant had no intention of causing the death of her mother and the statement found in Ex.P.5 intimation sent to the police authorities, therefore, show that the deceased suffered burn injuries by accident when the appellant threw the burning chimney lamp. In fact, in the statement given by the deceased to the Magistrate, which stands marked as Ex.P.4, she has also stated that a quarrel ensued between her and the appellant and during the quarrel, the appellant suddenly took the lighted chimney lamp and threw it at her and that she suffered burn injuries. The evidence, which we have extracted above, therefore, shows that the appellant threw the lighted chimney lamp without any intention that by his act, he will be setting fire to the clothes of the deceased leading to her death. In fact, on similar facts, the Supreme Court in SREE VIJAYAKUMAR -VS- STATE (2005 SCC (Cri) 1896), held that the act of throwing a burning kerosene lamp will only attract the penal provision of Section 304, Part II, IPC. In the case before the Supreme Court, the first accused in the said case took out a bottle and hit it on the head of the deceased, as a result of which, the bottle broke and the liquid spread over his body, and at that moment, the second accused picked up a burning kerosene lamp from the shop and threw it on the deceased, as a result of which, the deceased in that case caught fire. The Supreme Court, therefore, held that when a lighted chimney lamp is thrown without any premeditation at a person, as a result of which, burn injuries are caused, the person who threw the chimney lamp can only be convicted under Section 304 Part-II, IPC. The facts in the case on hand also show that the appellant returned home, picked up a quarrel with his wife and during the quarrel, he suddenly took a lighted chimney lamp and threw at her without any premeditation, which unfortunately caused burn injuries on the deceased Jeenath Nisha and resulted in her ultimate death.

15. We, therefore, set aside the conviction and sentence of the appellant under Section 302, IPC, and instead, he is convicted under Section 304, Part-II, IPC, for which he is sentenced to undergo five years rigorous imprisonment.

16. With the above modification in the conviction and sentence, the criminal appeal is disposed of. It is reported that the appellant is on bail. The appellant shall surrender the bail bonds. The learned Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence.

js

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate No.1, Coimbatore.
  2. -do-Through the Chief Judicial Magistrate, Coimbatore.
  3. The learned II Additional Sessions Judge, Coimbatore.
  4. - do - through the Principal sessions Judge, Coimbatore.
  5. The District Collector, Coimbatore District.
  6. The Director General of Police, Chennai.
  7. The Public Prosecutor, Madras.
  8. The Superintendent, Central Prison, Coimbatore.
  9. Inspector of Police, Mettupalayam Police Station.
- 1 cc to Mr.N.Ishtiaq Ahmed, Advocate SR.46027.

CRL.A.NO.1006 of 2001

RA (CO)  
RVL 02.12.2005