

Bail Slip

The Appellants namely 1.Manickam @ Raja Gounder, and 2) Thangaraj, S/o. Manickam @ Raja Gounder was directed to be released on bail as per order of this court dt.28.7.2011 in MP 1 of 2011 in CRL.A.No.463 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM :
THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.463 of 2011

1.Manickam @ Raja Gounder

2.Thangaraj ... Appellants/A2 & A3

Vs

The State represented by
Inspector of Police
Karimangalam Police Station
Dharmapuri.

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the conviction and sentence imposed on the appellants by the learned Additional Sessions Judge, (Fast Track Court) Dharmapuri by judgment dated 04.07.2011 in S.C.No.58 of 2010 and acquit the appellants by allowing this appeal.

For Appellants : Mr.R.Thirugnanam

For Respondent : Mr.G.Ramar
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed to set aside the conviction and sentence imposed on the appellants, by the Additional District and Sessions Judge (Fast Track Court), Dharmapuri, by judgment dated 04.07.2011, in S.C.No.58 of 2010 and to acquit them, by allowing this appeal.

2.It is the case of the prosecution that Raja (A1) got married to the deceased Kala, sometime in the year 2005 and they have two children through the wedlock; Kala was living in joint family with her parents-in-law (A2 and A4) and her brother-in-law (A3); Kala committed suicide on 25.03.2009, sometime around 11.30 a.m., pursuant to which, on the complaint Ex.P1, lodged by her mother Sulochana (P.W.1), Sembannan (P.W.7), Sub Inspector of Police, Karimangalam Police Station, registered a case in Crime No.252 of 2009 on 25.03.2009, for the offences under Sections 498-A, 304-B IPC; since, the death of Kala was within seven years of marriage, inquest was done by Thiagarajan (P.W.5), Executive Magistrate; Dr.Gowrysankar (P.W.6) performed autopsy on the body of Kala and opined that the death was due to consumption of insecticide, vide Post Mortem Certificate (Ex.P5); investigation of the case was taken over by Mohan (P.W.8), Deputy Superintendent of Police and it was continued by Mr.Pandiyaraj, Inspector of Police, who filed final report in P.R.C.No.3 of 2010, before the Judicial Magistrate Court, Palacode, against Raja (A1), Manickam (A2), Thangaraj (A3) and Mani @ Nallammal (A4), for the offences under Sections 498-A and 306 IPC; on the appearance of the accused, the documents relied upon by the prosecution were furnished to them, under Section 207 Cr.P.C.

3.The case was committed to the Court of Session in S.C.No.58 of 2010 and was made over to the Additional District and Sessions Court (Fast Track Court), Dharmapuri, for trial. The trial Court framed charges for the offences under Sections 498-A and 306 IPC, against A1 to A4. When questioned, the accused pleaded "Not guilty". To prove the case, the prosecution examined nine witnesses and marked eleven Exhibits. When the accused were questioned, under Section 313 Cr.P.C., about the incriminating circumstances appearing against them, they denied the same. On behalf of the accused, two witnesses were examined.

4.After considering the evidences on record and hearing the other side, the trial Court, by judgment dated 04.07.2011, has convicted only A2 and A3 and has sentenced them as follows :

Provision under which convicted	Sentence
U/s.498-A IPC	3 years rigorous imprisonment each and also to pay a fine of Rs.2,000/- each i.d. S.I. for 3 months each.

Challenging the conviction and sentence, A2 and A3 are before this Court.

5. Heard Mr.R.Thirugnanam, learned counsel for the appellants/A2 and A3 and Mr.G.Ramar, learned Government Advocate, appearing for the respondent State.

6. Facts admitted by both sides :

- (a) Kala (deceased) is the daughter of Sulochana (P.W.1) and sister of Kalaivani (P.W.2) and Kalpana (P.W.3);
- (b) Raja (A1) and Thangaraj (A3) are the sons of Manickam (A2) and Nallammal (A4); Raja (A1) is the elder brother of Thangaraj (A3).
- (c) Kala (deceased) got married to Raja (A1), sometime in the year 2005, and they have two children through the wedlock.
- (d) Kala was living in joint family with A1 to A4.
- (e) Kala committed suicide by consuming insecticide (Organo Phosphorus) on 25.03.2009 in the matrimonial home.
- (f) Kala's natal home is in Palavadi village and her matrimonial home is in Jhollampatti village, and the distance between the two, is about 30 km.
- (g) Raja (A1) was not at home on 25.03.2009, when the incident took place.

7. The short question for consideration is whether, Manickam (A2) and Thangaraj (A3) inflicted cruelty on deceased Kala.

8. Kalaivani (P.W.2), in her evidence, has stated that the deceased Kala was her younger sister and she was married to Raja (A1); Raja (A1) is the owner-cum-driver of a lorry and he would go out on work for about twenty days a month, continuously; in his absence, Manickam (A2) and Thangaraj (A3) harassed Kala, asking for sexual favours, which Kala used to confide in her, over phone; she and her mother used to console Kala; Fifteen days prior to death, Kala cried to her, over phone, about the harassment by Manickam (A2) and Thangaraj (A3). In the cross-examination, P.W.2 admitted that, Kala told her that, cash of Rs.500/- and 1,000/- would go missing in the house, for which, her husband would question her.

9. Similarly, Kalpana (P.W.3), younger sister of Kala has stated in her evidence that Kala got married to Raja (A1) and they have two children through the wedlock; Raja (A1) is the owner-cum-driver of a lorry; he would go out on work continuously for 20 to 25 days a month, during which time, Kala was sexually harassed by her father-in-law and brother-in-law, which she confided in her, over phone; on 25.03.2009, when Raja (A1) was not at home, a quarrel ensued, in connection with missing of cash, in which, Thangaraj (A3) scolded his father, Manickam (A2) and Kala and held them responsible for the loss; unable to withstand the taunt, Manickam (A2) consumed insecticide and Thangaraj (A3) took him to the hospital; when they were away, Kala consumed insecticide, coming to know of

which, she (P.W.3) rushed to Kala's house, in the evening.

10.Thus, both P.W.2 and P.W.3 admitted that monies used to go missing in the house, on account of which, there used to be frequent quarrels in the house and the brother-in-law (A3) of Kala suspected the involvement of Manickam (A2) and Kala.

11.The examination-in-chief of Kalpana (P.W.3) was held on 25.10.2010 and she was recalled on 03.01.2011 and a letter, purported to have been written by deceased Kala, was marked as Ex.P11. This letter did not form a part of the documents relied upon, under Section 207 Cr.P.C. Kalpana (P.W.3) explained that, she got the letter only subsequently and therefore, it was not given to the police.

12.Mr.R.Thirugnanam, submitted that the trial Court ought not to have permitted the marking of the said letter as Ex.P11, through P.W.3, at such a belated stage, thereby, taking the accused by surprise. He also submitted that no investigation has been done by the police to establish that the said letter was indeed written by the deceased Kala, by sending it to the expert for opinion, along with her admitted writings.

13.In the opinion of this Court, just because the letter was not given to the police during investigation, the Court could not have denied its proof, because, any evidence that is relevant to a case, but which surfaces subsequently, can be adduced during trial, in a criminal case. The only requirement is that, the accused should be put to notice of it and a copy should be furnished to the accused, for effectively cross-examining the witnesses.

14.As rightly contended by Mr.R.Thirugnanam, the prosecution had not taken any steps to establish that the said letter Ex.P11 was indeed written by deceased Kala. Failure of the prosecution to establish this fact, by itself, cannot lead to the inference that the letter was not written by Kala, if there are circumstances militating against such an inference. In this case, the letter is addressed to Sulochana (P.W.1) and appears to be dated 15.05.2018.

15.On reading of the letter, it is observed that, there is no whisper of alleged sexual harassment, by Manickam (A2) and Thangaraj (A3). In the letter, Kala has rued for not listening to her mother's advice, against marrying Raja (A1).

16.She has, in no uncertain terms, expressed her burning desire to end her life and has requested her mother to take care of her two children. In the passing, she has stated that, "My father-in-law is my death God (Yama)". Beyond that, there is no any allegation of sexual harassment by Manickam (A2) and Thangaraj (A3).

17. Whereas, the evidence of Kalpana (P.W.3) and the evidence of Thiyagarajan (P.W.5), Executive Magistrate, show that, on 25.03.2009, some money had gone missing in the house, on coming to know of which, Thangaraj (A3) abused his father Manickam (A2) and Kala. Unable to withstand the taunt, Manickam (A2) first consumed insecticide. On coming to know of it, Thangaraj (A3) rushed him to Om Shakthi Hospital, Dharmapuri, and while they were away, Kala consumed the same insecticide. From the report (Ex.P3) of the Executive Magistrate, it appears that, one Mani Mama had taken Kala to Government Hospital, Periapatti, where, she was declared brought dead. Thereafter, the body of Kala was brought back to her matrimonial home and was laid on a coir-cot, near the cowshed. Consequently, on coming to know of it, Kalaivani (P.W.2) and Kalpana (P.W.3) rushed to Kala's home. The police have not conducted any investigation on this aspect and have completely burked this. These facts came to light, during the inquest proceedings of the Executive Magistrate and in the evidence of Kalpana (P.W.3).

18. Kalaivani (P.W.2), in her evidence, has stated that, Kala confided in her and in her mother, about the harassment, meted out to her by Manickam (A2) and Thangaraj (A3), whereas, Sulochana (P.W.1), mother of Kala has stated that, she was totally in the dark about the allegation of sexual harassment and she came to know of it, only after the death of Kala, through Kalaivani (P.W.2) and Kalpana (P.W.3).

19. Kalpana (P.W.3) has admitted that, monies used to go missing frequently, on account of which, the needle of suspicion would point either towards Manickam (A2) or Kala and this was the reason for the disharmony in the house. Even on the fateful day, some amount went missing, due to which, Thangaraj (A3) berated his father Manickam (A2) and Kala.

20. In the opinion of this Court, the allegations of sexual harassment by Manickam (A2) and Thangaraj (A3) has been contrived, only subsequently, may be, to fix responsibility on the family members of Raja (A1). To recapitulate, these allegations do not find place in the letter, Ex.P11, purportedly written by deceased Kala to her mother Sulochana (P.W.1). The police have also burked the fact of the quarrel, that occurred for money missing on the fateful day, in which, Thangaraj (A3) upbraided his father (A2) and his sister-in-law Kala. Unable to bear the taunt, Manickam (A2) consumed poison and was taken to the hospital by Thangaraj (A3). When they were away, Kala consumed the same pesticide, but, unfortunately died. May be the thought, that her father-in-law may not survive, and overtaken by guilt, she would have consumed the pesticide.

In the result, this appeal is allowed and the order of conviction and sentence, passed by the Court below, is set aside. The bail bonds are discharged and the fine amount paid, if any, shall be refunded.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Sessions Judge,
(Fast Track Court)
Dharmapuri.
- 2.The Judicial Magistrate,
Palacode, Dharmapuri District.
- 3.The Chief Judicial Magistrate,
Dharmapuri.
- 4.The Superintendent of Police,
Dharmapuri District.
- 5.The Inspector of Police,
Karimangalam Police Station,
Dharmapuri.
- 6.The Public Prosecutor,
High Court, Madras.
- 7.The Section Officer,
Criminal Section,
High Court,
Madras.

+1cc to Mr.R.Thirugnanam, Advocate, S.R.No.87609

rrs 15/03/2019

Cr1.A.No.463 of 2011