

Bail Slip

The Appellant/Accused, namely Venkatesan S/o. Vaikundan, be and hereby was directed to be released on bail vide Court order dated 09.11.2011 in CRL MP.NO.1/11 IN CRL A.NO.623/2011 (S.C.No.259 of 2010 dated 29.09.2011, Additional District and Sessions Court (FTC No.2), Poonamallee)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.623 of 2011

Venkatesan (37)
S/o. Vaikundan,
No.40/30, Sesha Nagar,
Poonamallee,
Chennai 56.

... Appellant

Vs.

State represented by its
Inspector of Police,
Poonamallee Police Station,
Poonamallee,
Chennai 56.

... Respondent

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment dated 29.09.2011 passed in S.C.No.259 of 2010 on the file of the Additional District and Sessions Court (FTC No.2), Poonamallee.

For Appellant : Mr.R.Karthikeyan

For Respondent : Mr.G.Ramar
Government Advocate
(Crl. Side)

JUDGMENT

This criminal appeal has been preferred seeking to set aside the conviction made by judgment dated 29.09.2011 in S.C.No.259 of 2010 on the file of the Additional District and Sessions Court (FTC No.2), Poonamallee.

2 The facts in brief leading to the filing of this criminal appeal are as under:

2.1 It is the case of the prosecution that Venkatesan (appellant) got married to Malathy sometime in the year 1997 and they have two children through their wedlock; when Malathy questioned Venkatesan for recklessly spending money, he abused her and drove her to her natal home and thereafter, came there on 08.01.2009 and berated her in vulgar words in the presence of her mother and said "Why haven't you died still?"; saying so, he forcibly took her to his house; on the same day, i.e., 08.01.2009, around 8.00 p.m., Malathy committed suicide by self-immolation. On receiving information, her mother Eagabooshanam (PW1), her sister Sumathi (PW2) and Gopi (PW3) went to the appellant's village and thereafter, lodged a complaint (Ex-P1), based on which, Naganadhan (PW11), Inspector of Police, registered a case in Crime No.13 of 2009 at 23.30 hours, under Section 498-A and 306 IPC and prepared the printed FIR (Ex-P6). The I.O. went to the place of occurrence and found the charred body of the deceased Malathy. The I.O. prepared the observation mahazar (Ex-P2) and rough sketch (Ex-P7) in the presence of witnesses Rajendran (PW6) and Ravindran (PW7). The I.O. sent the body of Malathy to the Government KMC Hospital and thereafter, went there and conducted inquest over her body and prepared the inquest report (Ex-P8). The I.O. despatched the body for postmortem. Dr.Subramanian (PW9) performed autopsy on the body of the deceased Malathy and issued the postmortem certificate (Ex-P4). Dr.Subramanian (PW9), in his evidence as well in the postmortem report (Ex-P4), has stated as under:

"The deceased would appear to have died of extensive burns and Hypo volumic shock"

The I.O. arrested the appellant on 09.01.2009 at 18.00 hours. He examined the material witnesses and after his transfer, the investigation was continued by Velavan (PW12) who examined the doctor who conducted postmortem and the Scientific Assistant. He completed the investigation on 27.10.2009 and filed final report in P.R.C.No.65 of 2009 under Section 498-A and 306 IPC against the appellant.

2.2 On the appearance of the appellant, he was furnished with the copies of the relied upon documents under Section 207 Cr.P.C. and the case was committed to the Court of Session in S.C.No.259 of 2010 and was made over to the Additional Sessions Court (FTC No.2), Poonamallee, for trial.

2.3 The Trial Court framed charges under Sections 498-A and 306 IPC against the appellant and when questioned, the appellant pleaded "not guilty".

2.4 To prove the case, the prosecution examined twelve witnesses and marked eight exhibits and one material object.

2.5 When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same and gave a written explanation, wherein, he has stated that he got married to Malathy on 11.06.1997; six months after marriage, they both lived for about four years in her parents house; they have a son by name Bharath whose date of birth is 24.09.2001 and daughter Deepa whose date of birth is 20.03.2004; they were living happily; he was working as driver in Hyundai Company and the deceased Malathy was working in India Shoe Company; they purchased a land measuring half ground in Mangadu village by pooling their resources; they put up a hut in that plot and started living there; on 08.01.2007, his (appellant's) grandmother died; thereafter, they shifted from their own hut to his parents' house in Poonamallee; Malathy had taken lot of loans from her company; when the creditors started demanding money, they sold the land and paid off Rs.3,00,000/- to the creditors and with the balance, he (appellant) purchased a car; on 07.01.2009, Malathy asked him to drop the children in her mother's house; accordingly, on 08.01.2009, he (appellant) dropped his children there; Malathy went for work; around 5.00 p.m., he went to her mother's house to pick up his children; there, Malathy and her mother were quarreling; Malathy was asking her mother to return the money which she had borrowed from her company and given to her (mother); he consoled and pacified Malathy and brought her to his house in Poonamallee and went out on work; around 8.00 p.m., when he was not there, Malathy set fire to herself; on coming to know of it, he immediately returned home; the police came and took his parents along with him and kept him in the Police Station; on the next day, they foisted a case on him and remanded him to custody.

2.6 On behalf of the appellant, no witness was examined nor any document marked.

2.7 After considering the evidence on record and hearing either side, the Trial Court, by judgment dated 29.09.2011 in S.C.No.259 of 2010, convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
Section 498-A IPC	Two years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment.
Section 306 IPC	Five years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo one year imprisonment.

2.8 Challenging the above conviction and sentence, the appellant is before this Court.

3 Heard Mr.R.Karthikeyan, learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Crl.Side) appearing for the respondent/State.

4 Eagabooshanam (PW1) and Sumathi (PW2), in their evidence, have stated that the appellant got married to Malathy sometime in the year 1997 and got two children through their wedlock; the appellant would consume liquor and harrass Malathy whenever she questioned him for spending money recklessly; on 08.01.2009, around 5.30 p.m., the appellant came to their house and at that time, he abused Malathy and asked her "Why haven't you died still?"; saying so, he forcibly took her in his car to his house; around 8.00 p.m., they heard about the news of Malathy's death and went there. Eagabooshanam (PW1) has stated that she lodged the complaint (Ex-P1).

5 In the cross-examination, Eagabooshanam (PW1) and Sumathi (PW2) have admitted that after marriage, Malathy and the appellant lived in the house of Eagabooshanam (PW1) for about four years; they purchased a plot measuring about half ground and constructed a hut and started living there; in order to discharge Malathy's debts amounting to around Rs.3,00,000/-, the plot was sold and after paying to the creditors, with the balance money, the appellant purchased a car and derived income from it. She (PW1) has also admitted that after the incident, she first gave a complaint to the police against the appellant and his father; she also affixed her left thumb impression in the complaint; on the advice of her two sons, she gave a fresh complaint implicating the appellant alone.

6 The learned counsel for the appellant placed strong reliance on the unequivocal admission by Eagabooshanam (PW1) and buttressed his case by referring to the fact that the complaint and the FIR had reached the jurisdictional Magistrate only on 10.01.2009 at 3.30 p.m.,

7 Sumathi (PW2) has stated that on 08.01.2009 (date of incident), the appellant came to their house and assaulted Malathy and forcibly took her in his car.

8 Gopi (PW3), Madhi (PW4) and Sathish Kumar (PW5) have gone one step ahead and stated that they were neighbours of Eagabooshanam (PW1) and Sumathi (PW2); on 08.01.2009, around 5.30 p.m., the appellant came to the house of Eagabooshanam (PW1) and held Malathy by hair and dragged her forcibly, put her in his car and took her to his house.

9 In the cross-examination, Eagabooshanam (PW1) and Sumathi (PW2) have stated that they did not lodge any complaint after the appellant assaulted Malathy and took her in his car. They have all admitted that they went to the village of the appellant only after getting the news of Malathy's death. This conduct of Eagabooshanam (PW1), Sumathi (PW2), Gopi (PW3), Madhi (PW4) and Sathish Kumar (PW5) appears to be little queer. According to them the appellant physically attacked Malathy, pulled her hair, dragged her by her tresses and forcibly took her by his car. Eagabooshanam (PW1) to Sathish Kumar (PW5) would have immediately stopped the car or would have gone to the appellant's village for panchayat. No mother will remain stoic when her son-in-law is bashing her daughter in public gaze. Poonamallee village is hardly five kilometres from Mangadu village. This conduct of the witnesses should not be seen in isolation. It should be seen in the backdrop of the answer given by Eagabooshanam (PW1) that she first gave a written complaint implicating the appellant and his father and on the next day, on

the advice of her two sons, she gave a fresh complaint implicating only the appellant.

10 Admittedly, the appellant was not there at his house when the incident took place. In column No.3 of the inquest report (Ex-P8), it is stated that the dead body of Malathy was first seen by her mother-in-law Gowri. As rightly contended by the learned counsel for the appellant, the aforesaid categorical assertion of Eagabooshanam (PW1), if viewed in the backdrop of the fact that the complaint and the FIR had reached the Magistrate only two days later, coupled with the written explanation given by the appellant under Section 313 Cr.P.C., creates a reasonable doubt in the mind of this Court about the veracity of the allegation against the appellant, the benefit of which should be given to him. That apart, since the suicide of Malathy was after seven years of marriage, the presumption under Section 113-A of the Evidence Act cannot be invoked.

In fine, this criminal appeal is allowed. The conviction and sentence imposed on the appellant by the Trial Court in S.C.No.259 of 2010, by judgment dated 29.09.2011 are set aside and the appellant is acquitted of all the charges and bail bond executed by him stands cancelled. Fine amount paid, if any, shall be refunded.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd

To

- 1.The Judicial Magistrate -II, Poonamallee.
- 2.The Chief Judicial Magistrate, Thiruvallur.
- 3.The Additional District and Sessions Judge, Poonamallee.
- 4 The Inspector of Police,
Poonamallee Police Station,
Poonamallee,
Chennai 56.
- 5.The Superintendent ,Central Prison, Vellore.
- 6.The District, Collector, Thiruvallur.
- 7.The Director General of Police, Mylapore.
- 8.The Public Prosecutor,
High Court, Madras.
9. The section officer,
Criminal Section,
High court
Madras

+1cc to Mr.R.Karthikeyan , Advocate SR.No. 6435

Cr1.A.No.623 of 2011

A.SK(06/03/2019)