

Bail Slip

Crl.A. No.154 of 2012

The Appellant/Accused-4,namely Meena W/o.Ramesh,was directed to be released on bail as per order dated 01.03.2012 made in CRL MP.NO.1/2012 IN CRL A.NO.154/2012 on the file of this Hon'ble court.

Crl.A. No.155 of 2012

The Appellant/ Appellants/Accused-1 TO 3,namely 1 Senthil Kumar S/o.Venkatesan ,2 Venkatesan S/o. Jayaraman ,3 Suganya W/o.Venkatesan ,was directed to be released on bail as per order dated 20.03.2012 made in CRL MP.NO.1/2012 IN CRL A.NO.155/2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.11.2019

DELIVERED ON: 22.11.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.A. Nos.154 & 155 of 2012

Meena

Appellant in Crl.A. No.154 of 2012/A.4

1 Senthil Kumar

2 Venkatesan

3 Suganya Appellants in Crl.A. No.155 of 2012/A.1 to A.3

vs.

The State represented by
the Inspector of Police
Tambaram Railway Police Station
(Cr. No.37 of 2007)

Respondent in both the appeals

Criminal Appeals preferred under Section 374 (2) Cr.P.C.
challenging the judgment and order dated 23.02.2012 passed by

the Mahila Court-cum-Additional Sessions Court, Chingleput, Kancheepuram District in S.C. No.71 of 2008.

For appellant Mrs. G. Devi
in Crl.A.No.154 of 2012

For appellants Mr. V. Raghupathi
in Crl.A. No.155 of 2012

For respondent Mrs. P. Kritika Kamal
in both appeals Govt. Advocate (Crl. Side)

COMMON JUDGMENT

These criminal appeals have been preferred calling into question the legality and validity of the judgment and order dated 23.02.2012 passed in S.C.No.71 of 2008 on the file of the Mahila Court-cum-Additional Sessions Court, Chingleput, Kancheepuram District.

2 Inasmuch as both these criminal appeals emanate from the same judgment and FIR, they are considered and decided by this common judgment.

3 The digest of the facts giving rise to the filing of the instant criminal appeals is as under:

3.1 Deceased Srimathi was the daughter of Thulasi (P.W.4), a pushcart vendor in the Marina Beach and Paramasivam (P.W.5), and sister of Madhana Gopal (P.W.6). Their family is from Triplicane area in the Chennai city.

3.2 Srimathi married Senthil Kumar (A.1) on 20.08.2004 and at the time of marriage, she was given 21 sovereigns of gold and household articles. After marriage, she lived in joint family with her parents-in-law, viz., Venkatesan (A.2) and Suganya (A.3) in Meenambakkam area. Meena (A.4) is the sister of Senthil Kumar (A.1).

3.3 While so, a child was born to Srimathi sometime in the later half of 2006. It is alleged that the accused were demanding more dowry and were harassing Srimathi, on account of which, on 22.01.2007, around 6.30 a.m., she left her nuptial home with her six month old child and her whereabouts were not known. Both families started searching for her.

3.4 On 23.01.2007, a news item appeared in the Tamil daily "Dhina Thanthi" that a lady, with a child, has committed suicide by jumping from a running train. On seeing the said news item, Senthil Kumar (A.1) made enquiries and the family identified the body of Srimathi in the mortuary of the Government General Hospital, Chennai.

3.5 Even prior to that, on a written intimation of death (Ex.P.5) given by Dr. Manivel (P.W.10), who was on duty in the Emergency Ward of the Government General Hospital, Chennai, to the police, a case in Cr. No.37 of 2007 was registered by the Tambaram Railway Police under Section 174 Cr.P.C. (unidentified body) and the printed FIR was marked as Ex.P.6.

3.6 Since the death of Srimathi was within 7 years of marriage, Vijayalakshmi (P.W.8), Tahsildar, conducted inquest over the body of Srimathi and in her evidence as well in the inquest report (Ex.P.4), has opined that the death of Srimathi was due to dowry harassment by her husband and in-laws. Hence, the case was altered from one under Section 174 Cr.P.C. to one under Sections 498-A and 306 IPC vide alteration report (Ex.P.9).

3.7 Dr. Rajamani Beema Rao (P.W.7) performed autopsy on the body of Srimathi and issued post-mortem certificate (Ex.P.1), wherein, the following injuries have been recorded:

"I. Brown abrasions :

1. 2x1 cm on upper lip on right side
2. 4x2 cm on right upper cheek
3. 3x1 cm on right side forehead
4. 1x1 cm and 1x1 cm on right eyebrow
5. 1x0.5 cm on root of nose
6. 4x2 cm on right arm
7. 1x1 cm on top of right shoulder
8. 20x10cm on back of abdomen

9.1x1 cm, 2x1cm, 1x1 cm on back of left arm
10.2x1 cm on back of left elbow

II. Laceration 3x2 cm bone deep on mid occipital region.

III. On dissection of head : Dark red scalp contusion seen on right frontal and occipital region. Vault and base of skull intact. Subdural and lib arachnid hemorrhages seen on both cerebral hemisphere.

IV. Trachea separation seen between C2 and C3 level of cervical vertebrae with bruising of surrounding soft tissues.

Hyoid bone	- intact
Heart	- Fluid blood present in all chambers
Coronaries, valves	- normal
Lungs	- C/S congested
Stomach	- Empty
Mucosa	- Normal
Lita spleen kidneys	- C/S congested
Bladder	- Empty
Uterus	- Empty
Brain	- C/S congested

Opinion as to cause of death :

The deceased would appear to have died of multiple injuries (viscera preserved)"

3.8 After examining witnesses and collecting various reports, the police filed a final report in P.R.C. No.42 of 2007 before the Judicial Magistrate, Alandur for the offences under Sections 498-A and 304-B alternatively under Section 306 IPC against Senthil Kumar (A.1), Venkatesan (A.2), Suganya (A.3) and Meena (A.4).

3.9 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.71 of 2008 and made over to the Mahila Court, Chingleput, for trial.

3.10 The trial Court framed charges under Sections 498-A and 304-B IPC alternatively under Section 306 IPC against A.1 to A.4. When questioned, the accused pleaded not guilty.

3.11 To prove the case, the prosecution examined 11 witnesses and marked 10 documents.

3.12 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they merely denied the same and did not offer any explanation whatsoever, as to what according to them, would have been the probable cause of Srimathi's death. On the side of the accused, no witness was examined nor any document marked.

3.13 After considering the evidence on record and hearing either side, the trial Court, vide judgment and order dated 23.02.2012 in S.C.No.71 of 2008, acquitted the accused of the charge under Section 304-B IPC, however, convicted them of the charge under Sections 498-A and 306 IPC and sentenced them as under:

Provision under which convicted	Sentence
Section 498-A IPC	Rigorous imprisonment for three years and fine of Rs.1,000/- each, in default to undergo simple imprisonment for three months.
Section 306 IPC	Rigorous imprisonment for seven years and fine of Rs.1,000/- each, in default to undergo simple imprisonment for three months.

The aforesaid sentences were ordered to run concurrently.

3.14 Challenging the aforesaid conviction and sentences, while Meena (A.4) has filed Crl.A. No.154 of 2012, Senthil Kumar (A.1), Venkatesan (A.2) and Suganya (A.3) have filed Crl.A. No.155 of 2012.

4 Heard Mr. V. Raghupathi, learned counsel for the appellants in Crl.A. No.155 of 2012 and Mrs. G. Devi, learned counsel for the appellant in Crl.A. No.154 of 2012.

5 Before advertng to the rival submissions, it may be relevant to give a brief sketch of the testimony of the prosecution witnesses.

5.1 Sivakumar (P.W.1) was the Station Master in St. Thomas Mount Railway Station on 22.01.2007. He, in his evidence, has stated that on 22.01.2007, around 1.45 p.m., he received information from the guard of Electric Multiple Unit (EMU) train No.S.90 that a lady with a child, had jumped from the train between Pazhavanthangal and St. Thomas Mount; therefore, he sent his men there and they brought the lady and the child; he sent that lady by EMU train No.S.94 to the General Hospital, Chennai, for treatment and the child was sent to the Government Home for custody.

5.2 Jayaraj Moorat (P.W.2) was the Loco Pilot of the EMU train no. S.90 on that fateful day. He, in his evidence, has stated that on 22.01.2007, around 13.40 hrs., when the train was nearing St. Thomas Mount Railway Station, the passengers had pulled the chain and so, he brought the train to a halt; when he enquired the guard, he was told that a lady with a child, had jumped from the train between Pazhavanthangal and St. Thomas Mount; therefore, he relayed the information to the station and released the brakes and took the train forward.

5.3 Selvam (P.W.3), a passenger in EMU train No.S.90, in his evidence, has stated that he heard a commotion in the ladies compartment of the train and saw a lady with a child jumping out; the train stopped after some time and he alighted as an inquisitive onlooker; later, he learnt that the lady who jumped, had died.

5.4 Senthil Kumar (P.W.9), guard of EMU train No.S.90, has, in his evidence, stated that while he was on duty on 22.01.2007 in the said train, it stopped near St. Thomas Mount Railway Station; when he got down to enquire, he was told by the public that a lady had thrown the child and had jumped out of the train; he relayed this information to his higher authorities and continued his work in the train.

6 Much argument was advanced at the bar that the evidence of Sivakumar (P.W.1), Jayaraj Moorat (P.W.2) and Selvam (P.W.3)

should not be believed as there are contradictions galore in their evidence.

7 The learned counsel for the appellants attacked the evidence of the aforesaid witnesses and contended that when such an incident had taken place, it is the duty of Sivakumar (P.W.1), Station Master, to record it and send the information to the Railway police, which was not done by him (P.W.1). He further contended that based on the solitary evidence of Selvam (P.W.3) that he saw a lady with a child jumping out of the train, it cannot be said that the prosecution has proved that Srimathi committed suicide by jumping out of the train.

8 This Court carefully analysed the evidence of the aforesaid witnesses.

9 Sivakumar (P.W.1), Station Master, Jayaraj Moorat (P.W.2), Loco Pilot and Senthil Kumar (P.W.9), guard, have no personal axe to grind to depose against the accused. They are public servants who have merely stated as to the information received by them and the steps taken by them on coming to know of the incident. From the evidence of Sivakumar (P.W.1), it is apparent that Srimathi did not die immediately and was alive. That is why, Sivakumar (P.W.1) had sent her to the General Hospital, Chennai for treatment and the child to the Government Home for custody. Just because Sivakumar (P.W.1) had not sent any report to the Railway police, it cannot be stated that his evidence requires to be rejected.

10 The learned counsel for the defence contended that Srimathi could have slipped and fallen from the train and would not have jumped out of the train, as alleged by the prosecution. Unfortunately, no such suggestion was ever put to any of the witnesses on this line. Even if this Court disbelieves the eyewitness account of Selvam (P.W.3) that he saw a lady jumping out of the train, the evidence of Jayaraj Moorat (P.W.2), Loco Pilot and Senthil Kumar (P.W.9), guard, that the chain was pulled while the train was proceeding to St.Thomas Mount Railway Station and when they alighted to find out what had happened, the people who had gathered there had told them that a lady had jumped out of the train, would clearly fall within the meaning of res gestae evidence relevant under Section 6 of the Evidence Act. The illustration (a) to Section 6 of the Evidence Act, which reads as under, would dispel the cloud.

"(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact."

The jumping of Srimathi from the running train, pulling of the chain of the train, the train coming to a halt, the guard getting down and making enquiries which is part of his duty, and at that time, the people who had gathered there saying that a lady with a child had jumped out of the train, though are hearsay, would be relevant under Section 6 of the Evidence Act, since all these had occurred in the course of the same transaction. The English and American "hue and cry doctrine" and "excited utterances doctrine", have been statutorily incorporated in India via Section 6 of the Evidence Act.

11 Now, let us examine the defence theory that Srimathi slipped and fell down from the standpoint of the circumstantial and medical evidence. Srimathi had left her nuptial home with the child at 6.30 a.m. on 22.01.2007 and her whereabouts were not known. Thulasi (P.W.4), mother of Srimathi, has stated that after getting information from the appellant that Srimathi has left home, she started searching for her from 7.00 a.m. This shows that from the morning, Srimathi must have been in a state of ennui, wandering around without knowing what to do. The EMU train in the afternoon hours will usually not have rush. Therefore, the possibility of Srimathi travelling in the train standing near the entrance is remote. The normal speed of an EMU train is 60-70 kms./hr. in that sector as per information provided by the Railways. If Srimathi had slipped and fallen, she would have sustained injuries on whichever leg that touched the ground first, because, accidental slipping will occur only if one foot suddenly loses grip. The fall would have been very close to the railway track. On the contrary, Srimathi has not suffered any injury on either of her legs. She was holding her child tightly to her bosom and must have decided to die together with her child. However, when she intentionally jumped out of the train, her immediate instinct would have been to tighten her hold over the child. Even if she had landed on both her legs, the lower part of the body comes to rest suddenly, while the upper part remains in motion due to inertia of motion which depends on the velocity of the train in which she was travelling. The said inertia of motion would have made her lose balance and roll in the direction in which the train went. It is common knowledge that on either of the railway tracks, there will be stones. When she started rolling, she has sustained injuries on her face as well on her arms and mid occipital region. Dissection of her body shows that her C2 and C3

cervical vertebrae were fractured, which would have occurred due to the impact of her landing from the moving train on the ground and rolling thereafter. As explained above, the abrasion in her right arm shows that her motherly instinct has made her hold on to the child protectively while jumping and thus, has protected it from suffering any injury. The injuries noticed on her body sufficiently support the prosecution version that she had jumped out of the moving train, and is wholly inconsistent with the defence plea that she had slipped from the train. The fact that the child did not suffer any injury could also be a miracle of sorts. Even in our day-to-day life, we come across several freakish accidents where the victims survive miraculously. To cite one, a year ago, i.e., on 20.11.2018, a one year old child slipped out of the hands of its mother and fell on the ground in the space between the rail and the platform when the latter was attempting to alight from the Vishakapatnam-bound Samta Express at Platform No.1 of Mathura junction and fortunately, the child survived without a bruise even after all the compartments of the train passed over it, albeit the fact that the wheels of the train were barely an inch from the child. (See the 21st November, 2018 issue of The Times of India). Many a time, facts are stranger than fiction.

12 Coming to the evidence of Thulasi (P.W.4), Paramasivam (P.W.5) and Madhana Gopal (P.W.6), they have clearly implicated Senthil Kumar (A.1) by saying that he was subjecting Srimathi to cruelty for over a period of time by asking her to bring more money from her parents. They have also stated that on 11.01.2007, Srimathi left her nuptial home wearing a nightie and when this was informed to them, they went in search of her to Tambaram and ultimately, she returned home; when they asked her as to why she left her nuptial home, she cried to them saying that she was being harassed by the accused; her parents pacified her and sent her home; thereafter, on 22.01.2007, the incident in question happened.

13 The learned defence counsel contended that Meena (A.4), sister of Senthil Kumar (A.1), is married and living separately with her children and that she has been falsely implicated.

14 On a careful perusal of the evidence of Thulasi (P.W.4), Paramasivam (P.W.5) and Madhana Gopal (P.W.6), this Court does not find sufficient materials to sustain the conviction of Venkatesan (A.2), Suganya (A.3) and Meena (A.4)

for the offence under Sections 498-A and 306 IPC and hence, they deserve to be acquitted.

15 The evidence on record shows that Senthil Kumar (A.1) was not going for work and was living on the income of Srimathi, who was an employee in a private firm and was harassing her for more money that had pushed her to the wall and had made her commit suicide by jumping out of the running train on 22.01.2007. Senthil Kumar (A.1) has not produced any material to dislodge the presumption under Section 113-A of the Evidence Act.

16 Accordingly, the conviction of Senthil Kumar (A.1) of the offences under Sections 498-A and 306 IPC is confirmed. However, the substantive sentence of imprisonment alone imposed on Senthil Kumar (A.1) for the offence under Section 306 IPC is reduced from seven years rigorous imprisonment to three years rigorous imprisonment.

In the result:

- CrI.A. No.154 of 2012 preferred by Meena (A.4) is allowed and she is acquitted of all the charges. Bail bond executed by Meena (A.4) shall stand discharged and fine amount, if any, paid by her, shall be refunded to her.
- CrI.A. No.155 of 2012 preferred by Senthil Kumar (A.1), Venkatesan (A.2) and Suganya (A.3) is partly allowed. The conviction of Senthilkumar (A.1) of the offence under Sections 498-A and 306 IPC is confirmed. However, the substantive sentence of imprisonment alone imposed on Senthil Kumar (A.1) for the offence under Section 306 IPC is reduced from seven years rigorous imprisonment to three years rigorous imprisonment, to run concurrently with the sentence for the offence under Section 498-A IPC. Fine amount imposed on Senthil Kumar (A.1) is confirmed. The trial Court is directed to secure the presence of Senthil Kumar (A.1) and commit him to prison to serve out the remaining period of sentence. Venkatesan (A.2) and Suganya (A.3) are acquitted of all the charges. Bail bonds executed by Venkatesan (A.2) and Suganya (A.3) shall stand discharged and fine amount, if any, paid by them, shall be refunded to them.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

cad

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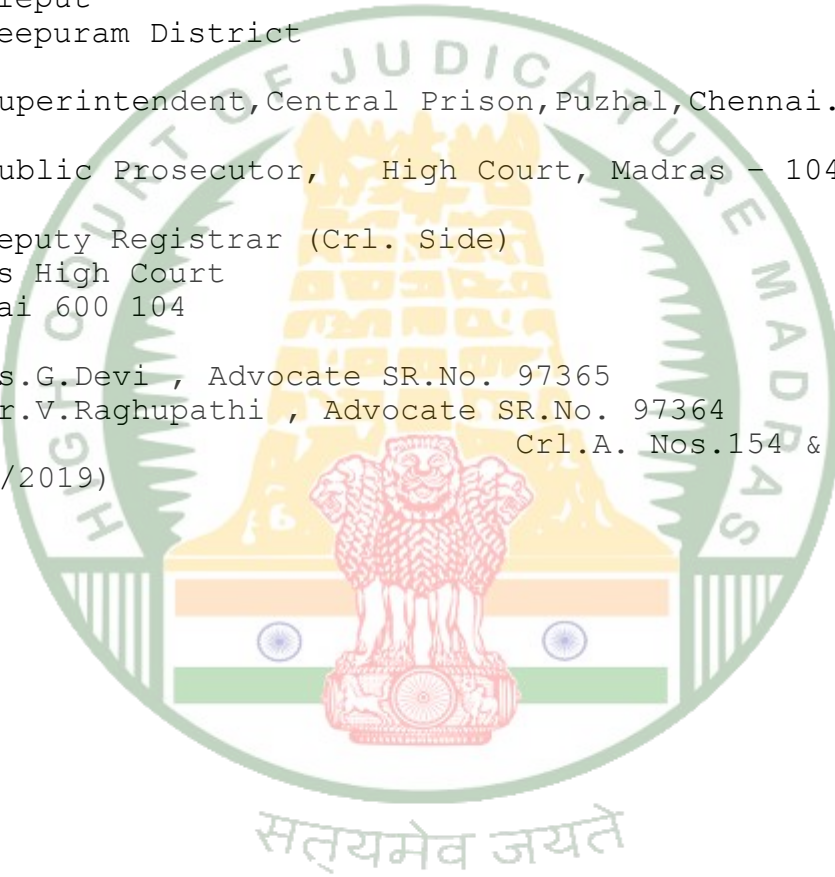
- 1 The Judicial Magistrate, Alandur, Chennai
2. The Chief Judicial Magistrate, Chengalpet
3. The Inspector of Police
Tambaram Railway Police Station
- 4 The Mahila Court-cum-Additional Sessions Judge
Chingleput
Kancheepuram District
- 5 The Superintendent, Central Prison, Puzhal, Chennai.
6. The Public Prosecutor, High Court, Madras - 104.
7. The Deputy Registrar (Crl. Side)
Madras High Court
Chennai 600 104

+1cc to M/s.G.Devi , Advocate SR.No. 97365

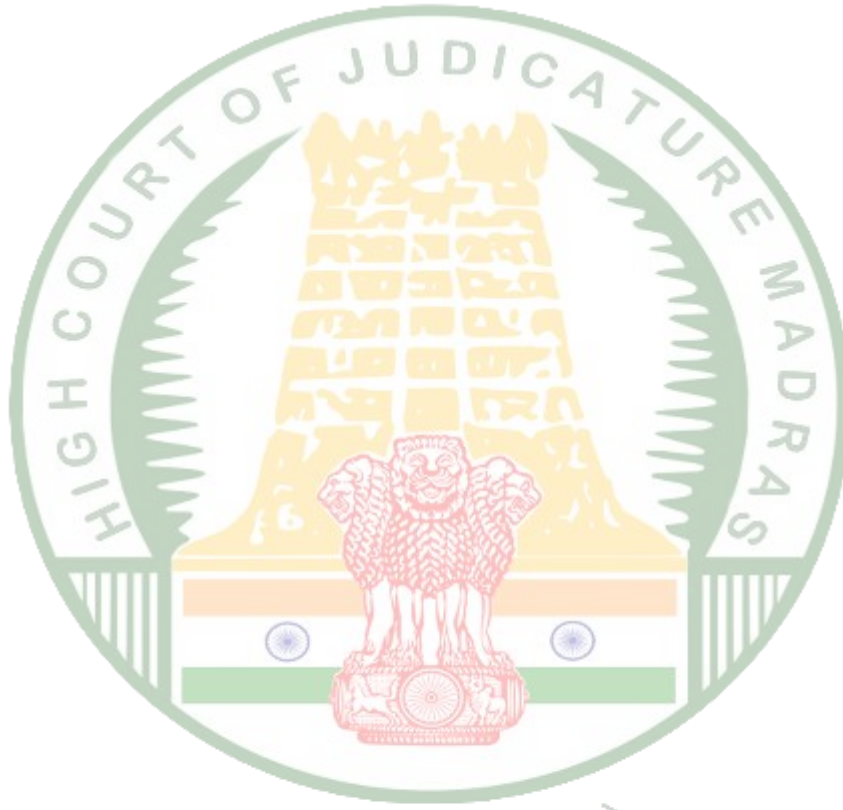
+2ccs to Mr.V.Raghupathi , Advocate SR.No. 97364

Crl.A. Nos.154 & 155 of 2012

A.SK(27/12/2019)



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