

BAIL SLIP

The Appellant/Accused, namely Santhosh Kumar S/o.Durai was directed to be released on bail as per order of this Court dated 12.04.2012 in CRL MP.NO.1/12 IN CRL A.NO.207/2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.10.2019

DELIVERED ON: 21.10.2019

CORAM:

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

Crl.A. No.207 of 2012

Santhosh Kumar Appellant/1st accused

vs.

The State represented by
the Assistant Commissioner of Police
Harbour Range
Chennai

Respondent/Complainant

(Cr. No.2/2006 on the file of
B3 Fort St. George Police Station)

Criminal Appeal preferred under Section 374 (2) Cr.P.C. challenging the judgment and order dated 14.02.2012 passed by the Court of Session (Mahalir Neethi Mandram), Chennai 600 104 in S.C. No.54 of 2007.

For appellant Mr. K. Shanmugam

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

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 14.02.2012 passed in S.C. No.54 of 2007 on the file of the Court of Session (Mahalir Neethi Mandram), Chennai 600 104.

2 The gist of the facts leading to the filing of the instant criminal appeal are as under:

2.1 Santhosh Kumar (A1) got married to the deceased Amulu on 14.09.2005 and after marriage, it is alleged that he ill-treated her along with his mother Kala (A2), subjected her to cruelty and demanded more dowry, unable to withstand which, Amulu doused herself with kerosene on 03.01.2006 around 8.15 a.m. and set fire to herself. She was rushed by her relative Kabali (not examined) to the Government Hospital, Royapettah, where, she was examined by Dr. Subramani (P.W.10) at 8.30 a.m. and the copy of the accident register was marked as Ex.P.10. In the cross-examination of Dr. Subramani (P.W.10), he has said that Amulu was conscious. She was admitted as in-patient in the Burns Department of Government Hospital, Royapettah and the police were intimated of the incident.

2.2 Jayakumar (P.W.14), Sub-Inspector of Police, went to the Government Hospital, Royapettah and in the presence of Dr. Sridevi (P.W.8), recorded the statement of Amulu (dying declaration) which was marked as Ex.P.16, based on which, Jayakumar (P.W.14) registered a case in Cr. No.2 of 2006 under Section 306 read with Section 511 IPC and prepared the printed F.I.R. (Ex.P.17).

2.3 On request, Thirumagal (P.W.11), VII Metropolitan Magistrate, George Town, Chennai, came to the hospital and recorded the dying declaration of Amulu at 4.00 p.m. on 03.01.2006 in the presence of Dr. Rosy (P.W.9), who certified that Amulu was fully conscious and was in a fit state of mind to give the dying declaration. The dying declaration recorded by Thirumagal (P.W.11) was marked as Ex.P.12. Amulu succumbed to the injuries at 11.15 p.m. on 04.01.2006.

2.4 Investigation of the case was taken over by Balasubramaniam (P.W.16), Assistant Commissioner of Police, who requested Sivakumar (P.W.12), Executive Magistrate/Tahsildar, to conduct inquest over the body of Amulu, since the death had occurred within seven years of marriage.

2.5 Sivakumar (P.W.12) conducted inquest over the body of Amulu and in his evidence as well in the inquest report (Ex.P.14), has stated that the death of Amulu was on account of dowry harassment.

2.6 Dr. Baskar (P.W.15) conducted autopsy on the body of Amulu. He, in his evidence as well in the post-mortem certificate (Ex.P.21), has stated that Amulu would appear to have died of "shock due to extensive mixed burns".

2.7 After examining various witnesses and collecting reports, the police completed the investigation and filed a final report in P.R.C. No.67 of 2006 before the VII Metropolitan Magistrate Court, George Town, Chennai, under Sections 498-A and 304-B IPC or alternatively under Section 306 IPC against Santhosh Kumar (A1) and his mother, Kala (A2).

2.8 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed the Court of Session in S.C. No.54 of 2007 and was made over to the Mahila Court, Chennai, for trial.

2.9 The trial Court framed charges under Sections 498-A and 304-B IPC and also framed an alternative charge under Section 306 IPC. When questioned, the accused pleaded not guilty.

2.10 To prove the case, the prosecution examined 17 witnesses and marked 24 exhibits and 2 material objects.

2.11 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. On the side of the accused, four witnesses were examined and one document was marked.

2.12 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 14.02.2012 in S.C.No.54 of 2007, acquitted Kala (A2) of the charges under Sections 498-A and 304-B IPC or alternatively under Section 306 IPC and Santhosh Kumar (A1) of the charge under Section 304-B IPC, however, convicted and sentenced Santhosh Kumar (A1) as under:

Provisions under which convicted	Sentence
S.498-A IPC	One year rigorous imprisonment and fine of Rs.5,000/-, in default to undergo one month simple imprisonment.
S.306 IPC	Five years rigorous imprisonment and fine of Rs.25,000/-, in default to undergo six months simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.13 Assailing the aforesaid conviction and sentences passed by the trial Court, Santhosh Kumar (A1) is before this Court.

3 Heard Mr. K. Shanmugam, learned counsel for the appellant and Mrs. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4 The prosecution has proved beyond cavil that Amulu got married to Santhosh Kumar (A1) on 14.09.2005 and she committed suicide by self-immolation on 03.01.2006 and died on 04.01.2006 at 11.15 p.m.

5 The appellant has been acquitted of the charge under Section 304-B IPC, assailing which, the State has not preferred any appeal. The question that requires to be decided in this appeal is whether there are materials to show that the appellant had inflicted cruelty on Amulu and whether such cruelty had triggered Amulu's suicide.

6 The prosecution case rests mainly on the two dying declarations given by Amulu, i.e., Ex.P.16 that was given to the police and Ex.P.12 that was given to the Magistrate.

7 The free English translation of what Amulu stated in the dying declaration (Ex.P.16) given to the police is as under:

"I am residing in the above address. My father is no more. My mother is alive. My mother's name is Shantha. My marriage with Santhosh Kumar was solemnized in October 2005 in the presence of elders and family members. From the time of marriage, there used to be petty quarrels between us. My husband will beat me. Yesterday, 02.01.2006, since morning, my husband was quarreling with me and was abusing me in filthy language. Therefore, I went to my aunt's house and complained to her. My aunt commiserated with me and sent me back with my husband. In the night also, my husband quarreled with me. Today, 03.01.2006, my husband once again abused me in foul language. The time then was 8.15 a.m. So, I took kerosene from my house, poured on myself and set fire. Now, I am in the Government Hospital, Royapettah, under treatment. My husband and my mother-in-law Kala are responsible for my self-immolation. Action should be taken against them."

8 Similarly, the free English translation of what Amulu has stated in the dying declaration (Ex.P.12) given to Thirumagal, Magistrate (P.W.11) is as under:

"I have studied upto VIII standard. I am residing in Sathya Nagar. I got married four years ago. I do not know what job my husband is doing. My mother-in-law is working as a daily wager. Whenever I go for cleaning vessels, my mother-in-law and my husband will secretly confabulate. On seeing me, they will stop their discussions abruptly. Thereafter, my husband will beat me. Day before yesterday, after my mother-in-law left home, my husband assaulted me with a plank. I got riled and went to my aunt's house. In the evening, my aunt mediated and sent me back with my husband. Yesterday, my husband brandished a knife and abused me saying that he will kill me and get married again and that I cannot do anything. Therefore, I got irked and

quarreled with him. Around 8.00 a.m., when none was there at home, I poured kerosene on myself and set fire."

9 Apple @ Krishnaveni (P.W.3), Amulu's aunt, has, in her evidence, stated that she (P.W.3) had arranged the marriage of Amulu with Santhosh Kumar (A1); after their marriage, the couple used to quarrel frequently; at the time of marriage, Amulu's mother had promised to give seven sovereigns of gold, but, did not keep up her word and that used to be the subject matter of the quarrel; she used to console Amulu; Santhosh Kumar (A1) used to beat Amulu; on 02.01.2006, around 5.00 p.m., Amulu came to her house and told her (P.W.3) that Santhosh Kumar (A1) had assaulted her and asked her to intervene; on the same evening, around 7.00 p.m., Santhosh Kumar (A1) and his mother came to her house and after compromise talks, Amulu was sent with them; on 03.01.2006, she received information that Amulu was admitted in the hospital and hence, she went there to call on Amulu; Amulu died the next night. In the cross-examination, this witness has admitted that Amulu's family was poor and the marriage expenses were borne by the accused. Even in the cross-examination, she has reiterated the fact that on 02.01.2006, Amulu came to her house at 5.00 p.m and around 7.00 p.m., the accused came to her house and after compromise talks, Amulu was sent back with them. Thus, there is adequate corroboration for the two dying declarations given by Amulu.

10 The nub of the defence testimonies revolve around the charge under Section 304-B IPC for dowry demand. However, the accused had taken a plea that Amulu was not interested in marriage and that Amulu was in love with someone else. But, none of the witnesses has even stated the name of the person with whom Amulu was in love and has merely given a general statement to that effect. In fact, in the cross-examination of Gomathi (D.W.1), she has stated that she does not directly know about Amulu's love affair and that she had heard so only on grapevine. It is very easy to defile the character of a dead woman by making such insinuations. Since the death of Amulu was within one year of marriage, the Court may raise the presumption under Section 113-A of the Evidence Act. Of course, the same is a rebuttable presumption. But, unfortunately, there is no credible material on record for rebutting the presumption, especially in the teeth of the two dying declarations alluded to above, which stand corroborated by the evidence of Apple @ Krishnaveni (P.W.3).

11 In view of the foregoing discussion, this Court does not find any infirmity in the judgment of conviction passed by the trial Court. However, to subserve the interests of justice, the sentence of five years rigorous imprisonment is reduced to three years rigorous imprisonment.

In the result, this criminal appeal stands dismissed. The trial Court is directed to secure the presence of the appellant and commit him to prison to serve out the sentence.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 THE SESSIONS JUDGE
MAHALIR NEETHI MANDRAM
CHENNAI 600 104
2. THE METROPOLITAN MAGISTRATE, VII, GEORGE TOWN, CHENNAI
- 3 THE CHIEF JUDICIAL MAGISTRATE, EGMORE
4. THE ASSISTANT COMMISSIONER OF POLICE
HARBOUR RANGE, CHENNAI
5. THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL CHENNAI
6. THE DISTRICT COLLECTOR, CHENNAI
7. THE PUBLIC PROSECUTOR
HIGH COURT OF MADRAS
8. THE INSPECTOR OF POLICE,
B3 FORT ST GORGE, CHENNAI
9. THE SECTION OFFICER,
CRIMINAL SECTION (RECORDS), HIGH COURT, MADRAS

Cr1.A. No.207 of 2012

A.SK(02/12/2019)