

Bail Slip

The Appellant herein/Accused namely 1. Rajan S/o. Nagaraj 2. Chellammal W/o. Nagaraj (in S.C.No.37 of 2009 on the file of the Session Judge, Magalir Neethimandram, (Mahila Court) Coimbatore) was directed to be released on bail by order of this Court dated 20.06.2012 and made in Crl.M.P. 1/2012 in Crl.A.No.345/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 31.10.2019
PRONOUNCED ON : 05.11.2019

CORAM
THE HONOURABLE Mr. JUSTICE P.N.PRAKASH

CRL.A.No.345 of 2012

1. Rajan
2. Chellammal

.. Appellants/ Accused

Vs.

State
Rep. by the Inspector of Police,
Thudialur AWPS Police Station,
Coimbatore District.
(Crime No.2 of 2008)

.. Respondent/
Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and order dated 25.05.2012 passed by the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore in S.C.No.37 of 2009.

For Appellants : Mr.N.S.Sivakumar
For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 25.05.2012 passed by the Sessions Judge (Mahila Court), Coimbatore in S.C.No.37 of 2009.

2.The long and short of the facts giving rise to the filing of this case is as under :

2.1.Rajan (A1) got married to Masilamani (deceased) two years prior to her suicide on 16.01.2008. The couple was blessed with a girl child. Their child's birthday fell on 11.01.2008. The couple was intending to celebrate the child's

birthday by cutting a cake and therefore, they bought a birthday cake. Masilamani wanted to go to the temple with the child and asked her husband Rajan (A1) to accompany her. He not only refused to accompany her, but joined hands with his mother Chellammal (A2), berated and assaulted her.

2.2.Unable to withstand the taunts, Masilamani doused herself with kerosene and committed self-immolation. She was admitted to the Coimbatore Medical College and Hospital at 11.55 a.m. by Rajan (A1). She was admitted into the Burns Ward and an intimation was sent to the duty Magistrate for recording her statement. Intimation was also sent to the police by the hospital authorities.

2.3.G.Thanendran (P.W.4), Judicial Magistrate No.I, Coimbatore, came to the hospital at 02.40 hours and recorded the statement of Masilamani, in the presence of Dr.Srinivasan (not examined) and the statement was marked as Ex.P2. Jayadevi (P.W.7), Sub Inspector of Police, came to the hospital and recorded the statement of Masilamani, which was marked as Ex.P7.

2.4.Based on her statement, Jayadevi (P.W.7) registered a case in Crime No.2 of 2008 under Section 498-A IPC at 18.00 hours on 11.01.2008 and prepared the printed F.I.R. (Ex.P8). Thereafter, Jayadevi (P.W.7) went to the place of occurrence and prepared the observation mahazar (Ex.P3), rough sketch (Ex.P9) and seized an empty kerosene can (M.O.1) under the cover of mahazar (Ex.P4).

2.5.Masilamani died on 16.01.2008 at 03.10 p.m., pursuant to which, the case was altered to one under Section 306 IPC. Since the death of Masilamani was within seven years of marriage, Varadarajan (P.W.9), Revenue Divisional Officer, conducted inquest and submitted his report (Ex.P11), wherein, he has opined that the death of Masilamani could be due to dowry harassment.

2.6.Therefore, the case was once again altered to one under Section 304-B IPC against Rajan (A1), his mother Chellammal (A2) and sister Padma (A3).

2.7.Dr.Jeyasingh (P.W.6) performed autopsy on the body of the deceased and in his evidence as well in the post-mortem certificate (Ex.P6), has opined that Masilamani would appear to have died of extensive burns and its complications.

2.8.Investigation of the case was taken over by S.T.Rajan, Superintendent of Police, who examined witnesses and thereafter, filed a final report in P.R.C.No.2 of 2009 before the Judicial Magistrate No.I, Coimbatore under Section 4 of the Dowry

Prohibition Act, 1961 (for brevity "the DP Act") and Sections 498-A and 304-B IPC against Rajan (A1) and his mother Chellammal (A2). Rajan's (A1's) sister Padma (A3) was not included in the charge sheet.

3. 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.37 of 2009 and was made over to the Mahila Court, Coimbatore, for trial. The trial Court framed charges under Section 4 of the DP Act, 498-A and 304-B IPC against the accused and when questioned, they pleaded "not guilty".

4. To prove the case, the prosecution examined 9 witnesses, marked Exs.P1 to P15 and one material object. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the same. However, both the accused filed a written statement denying the allegations against them.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 25.05.2012 in S.C.No.37 of 2009, acquitted the accused of the charge under Section 4 of the DP Act and 304-B IPC, but convicted and sentenced them as under :

Rank of the accused	Provision under which convicted	Sentence
Rajan (A1)	Section 498-A IPC	2 years rigorous imprisonment and fine of Rs.3,000/- in default, to undergo 6 months simple imprisonment
Chellammal (A2)	Section 498-A IPC	1 year rigorous imprisonment and fine of Rs.1,000/- in default, to undergo 3 months simple imprisonment

Challenging the conviction and sentence, the accused have filed the present appeal.

6. Heard Mr.N.S.Sivakumar, learned counsel for the appellants/ accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

7. The prosecution has proved beyond cavil the following facts :

- (a) The relationship between the parties;
- (b) Rajan (A1) was living with his wife Masilamani and daughter in one portion of the house at door

No.2/99, Kasthurinaickenpudur, Pannimadai, Coimbatore District and in another portion of the same house, his mother Chellammal (A2) was residing; and
(c) Masilamani committed self-immolation in the house on 11.01.2008 around 11.30 a.m. and died on 16.01.2008 at 03.10 p.m.

8. The appellants have been acquitted by the trial Court of the grave charge under Section 304-B IPC and Section 4 of the DP Act, against which, the State has not filed any appeal. The point for determination in this appeal is whether the materials are sufficient for sustaining the conviction of the appellants under Section 498-A IPC.

9. The two dying declarations viz. Ex.P2 that was given to the Magistrate (P.W.4) and Ex.P7 that was given to the Sub Inspector of Police (P.W.7). The free translation of the dying declaration of Masilamani (Ex.P2) given to the Magistrate is as under :

"I belong to Idayarpalayam village. I got married to Rajan two years ago. We are blessed with a girl child. Today is our daughter's birthday and so, I told my husband that we all can go the temple, to which, my mother-in-law Chellammal (A2) objected. At 09.00 a.m., a wordy quarrel ensued amongst us, in which, my husband and my mother-in-law assaulted me and called me mad. My husband also exhorted me to die. My mother-in-law snatched the child and went out of the house. Therefore, out of frustration, I poured kerosene and set fire to myself. The name of my child is Ramya Sri. My mother-in-law would quarrel with me frequently. My husband would support her. My daughter must be brought up by my parents. Please help me. My father-in-law Nagaraj is a good person. He had gone to office. He never quarrelled with me. Action should be taken against my husband and mother-in-law."

This dying declaration was recorded by the Magistrate in the presence of Dr.T.Srinivasan, who has also certified that Masilamani was fully conscious and was mentally fit for statement.

10. Coming to the dying declaration (Ex.P7), which was given to the Sub Inspector of Police (P.W.7), she has repeated the same story with different words. She has added that, when her husband and mother-in-law objected to go to the temple, she pushed the cake that was brought for the birthday celebration and her husband and mother-in-law assaulted her.

11.Mr.Sivakumar, learned counsel for the appellants contended that the proved facts fall short of the requirements of Section 498-A IPC, inasmuch as the cruelty was not to such an extent, so as to push her to commit suicide. This Court is unable to countenance this submission because, the fact remains that after the incident, she committed suicide by self-immolation. Fortunately, the trial Court did not convict the appellants under Section 306 IPC. It is trite that the accused, who is charged of the offence under Section 304-B IPC, can be convicted under Section 306 IPC even without a charge being framed under Section 306 IPC (See Gurnaib Singh Vs. State of Punjab [(2013) 7 SCC 108]).

12.Learned counsel for the appellants further contended that in the second dying declaration (Ex.P7), Masilamani has stated that she pushed the cake to the floor and that was the cause for the quarrel and hence, the appellants cannot be convicted of cruelty. A reading of the second dying declaration (Ex.P7) shows that the appellants were constantly nagging and assaulting Masilamani for over a period of time. On the fateful day, the cause of the quarrel was not Masilamani's act of pushing the cake down, but the refusal of the appellants to send her to the temple with the child. Masilamani felt upset when the appellants objected to her desire of going to temple and in a fret of anger, she must have pushed the cake, for which, the appellants have no good reason to beat her.

13.Mr.Sivakumar contended that Masilamani's parents, who were examined as P.W.1 (Lalitha) and P.W.2 (Moorthy), have stated that the couple was living happily and did not make any allegation against the appellants. It must be noted that Masilamani's parents were living far away and they had no direct knowledge of the incident.

14.In such view of the matter, this Court does not find any infirmity in the conviction of the appellants by the trial Court. However, this Court is of the view that interests of justice will be served, if the sentence of two years rigorous imprisonment imposed on Rajan (A1) by the trial Court is reduced to one year rigorous imprisonment.

In the result, this criminal appeal is partly allowed. The conviction imposed on the appellants by the trial Court under Section 498-A is confirmed. The sentence imposed by the trial Court on Chellammal (A2) is confirmed. The sentence of two years rigorous imprisonment imposed by the trial Court on Rajan (A1) is reduced to one year rigorous imprisonment. The sentence of fine imposed by the trial Court stands confirmed. The trial Court is directed to secure the appellants and commit them to prison to undergo the remaining period of sentence, if any.

Registry is directed to transmit the records to the Court concerned forthwith.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1.The Sessions Judge, Magalir Neethimandram
(Mahila Court),
Coimbatore.

2.The Judicial Magistrate I
Coimbatore

3.Do Thro The Chief Judicial Magistrate
Coimbatore

4.The Inspector of Police,
Thudialur AWPS Police Station,
Coimbatore District.

5.The Public Prosecutor,
High Court, Madras.

6.The Deputy Registrar,
Criminal Side,
High Court, Madras.

Copy to

The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.N.S.Sivakumar, Advocate sr 91438.

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SV(CO)
SP(27/11/2019)

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