

BAIL SLIP

The Appellant/Accused, namely P.Gopalakrishnan S/o.Palanisamy Appellant / Accused was directed to be released on bail as per order of this Court dated 13.07.2012 in MP.NO.1/12 IN CRL A.NO.384/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 23.10.2019	Date of pronouncing Judgment 25.10.2019
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THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.A.No.384 of 2012

P.Gopalakrishnan

... Appellant/Accused

Versus

State represented by
The Inspector of Police
All Women Police Station
Bhavani, Erode District.
(Cr.No.6 of 2010)

.. Respondent/Complainant

Appeal filed under Section 374 (2) of Cr.P.C. against the Judgment of conviction and sentence passed by the learned V Additional District and Sessions Judge, Bhavani, Erode District, in S.C.No.143 of 2011 dated 22.06.2012.

For Appellant : Mr.S.Lakshmanasamy

For Respondent : Mrs.Kritika Kamal. P.

Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been preferred by the accused challenging the Judgment of conviction and sentence passed by the learned V Additional District and Sessions Judge, Bhavani, Erode District, in S.C.No.143 of 2011 dated 22.06.2012.

2. The prosecution story is as follows:-

Deepa was married to Gopalakrishnan (accused) on 24.10.2004 and two children were born to them, of which the younger one died on account of illness. Deepa committed suicide by hanging on 15.10.2010 in her matrimonial home. On the complaint (Ex.P1) lodged by Ramasamy (PW.1), the father of Deepa, Devi (PW.13) - Sub Inspector of Police registered a case in Crime No.6 of 2010 under Section 174 Cr.P.C on 15.10.2010 at 23.30 hours and prepared the printed First Information Report (Ex.P8). Since the death of Deepa was within 7 (seven) years of marriage, Rajarathinam (PW.15), Executive Magistrate, conducted inquest

over the body of Deepa and in his evidence as well in the Inquest Report (Ex.P10), has stated that the death of Deepa was not due to dowry harassment. Dr.Poorna Chandrika (PW.12) performed autopsy on the body of Deepa and in her evidence as well in the postmortem certificate and final opinion (Exs.P4 and P5) has opined as follows:-

"OPINION: I could not give a definite opinion regarding the cause of death as body is in early stage of decomposition. However, death due to antemortem hanging cannot be ruled out. Death would have occurred 36-48 hrs prior to autopsy."

Since the Doctor suspected that the hanging was ante-mortem, the Investigating Officer sought her further opinion by giving a questionnaire as to whether Deepa would have been murdered and thereafter hanged, for which, Dr.Poorna Chandrika (PW.12) stated that she does not suspect that also, because she did not find any external injuries due to struggle and there was no damage to Hyoid bone. Since the police were not able to collect evidence of murder, they filed a final report in PRC No.16 of 2011 before the learned Judicial Magistrate, Bhavani, under Sections 498(A) and 306 IPC against Gopalakrishnan (accused).

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.143 of 2011 and was made over to the V Additional District and Sessions Court, Bhavani for trial.

4. The trial Court framed charges under Sections 498-A and 306 IPC against the accused and when questioned, he pleaded 'not guilty'.

5. To prove the case, the prosecution examined 16 witnesses, marked Exs.P1 to P10. When the accused was questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of the accused, two witnesses Kannammal (DW.1) and Ramasamy (DW.2) were examined.

6. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 22.06.2012 in S.C.No.143 of 2011 convicted and sentenced the accused as follows:-

Provision under which convicted	Sentence
Section 498 (A) IPC	2 years rigorous imprisonment and fine of Rs.1,000/- in default, to undergo 6 months simple imprisonment.
Section 306 IPC	7 years rigorous imprisonment and fine of Rs.1,000/- in default, to undergo 6 months simple imprisonment.

7. Challenging the conviction and sentence, the accused has filed the present appeal.

8. Heard learned counsel for the accused and learned Government Advocate (Crl. Side).

9. Learned counsel for the accused submitted that Deepa was suffering from depression, after the untimely death of her daughter and that whenever she saw a girl child, she would start weeping and feel depressed. In support of this submission, he took this Court through the evidence of Jothi (PW.5), Venkatachalam (PW.7) and Venkatachalam (PW.8).

10. The trial Court has disbelieved the testimony of these three witnesses on the short ground that they were close relatives of the accused. But the fact remains that these witnesses, in their examination in chief itself, have stated so and they were not declared hostile by the prosecution. Ramasamy (PW.1) and Lakshmi (PW.2), the parents of Deepa, have stated about the marriage of Deepa with the accused, and Ramasamy (PW.1) and Lakshmi (PW.2) have further stated that for five years, they were living happily. Ramasamy (PW.1), the father of Deepa, has stated that the accused was constructing a house and wanted Rs.1,00,000/-, which he borrowed and gave and that the accused was paying the interest for it. The parents have also agreed with that the second child of Deepa died due to a peculiar heart disease and Deepa was very disturbed. Even in the inquest, the panchayatdars have told the Executive Magistrate that Deepa was very sensitive and used to quarrel with her husband frequently, but there was no dowry harassment.

11. However, learned Government Advocate (Crl. Side) submitted that PW.1 and PW.2 have stated that the accused was addicted to liquor and after drinking, he would beat his wife.

12. But a reading of the complaint given by them does not show that the accused beat his wife. In the complaint, it is only stated that after drinking liquor, he would create problem in the house. The accused has examined two witnesses, Kannammal (DW.1) and Ramasamy (DW.2), who have stated that they are the neighbours of the accused; that the accused was working as Mason; that their second child died, within 5 months of its birth; the couple were living normally and on the date of the incident, the family members of Deepa ransacked the house of accused. In the cross examination by the prosecutor, it was merely suggested to them that they were giving evidence to favour the accused as the accused was from their village, which suggestion, they denied. The evidence of Kannammal (DW.1) that the family members of Deepa ransacked the house of accused after the incident, was not denied. Of course one can understand the state of mind, in which the family members of Deepa would have been on coming to know of her sudden death. The same anxiety can also be a reason for exaggeration. The vague allegation made by PW.1 and PW.2 that Gopalakrishnan would consume liquor and create problems at home without anything more, is insufficient to sustain the conviction under Sections 498(A) and 306 IPC. Thus, in the absence of satisfactory evidence to show that Gopalakrishnan had inflicted cruelty on Deepa and that had resulted in her suicide, the conviction and sentence cannot be sustained.

13. In the result, this Criminal Appeal is allowed and the conviction and sentence passed by the learned V Additional District and Sessions Judge, Bhavani, Erode District, in S.C.No.143 of 2011 dated 22.06.2012 is hereby set aside. The accused is acquitted of the charges under Sections 498(A) and 306 IPC. The bail bond shall stand discharged and the fine amount paid if any, shall be refunded. Registry is directed to transmit the original records to the Sessions Court forthwith.

mra

Sd/-

Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

- 1.The Judicial Magistrate,Bhavani
- 2.Do thro the Chief Judicial Magistrate, Erode.
- 3.The V Additional District and Sessions Judge,
Bhavani, Erode District.
- 4.The Superintendent Central Prison,Coimbatore

5.The Inspector of Police
All Women Police Station
Bhavani, Erode District.

6.The Public Prosecutor, High Court, Chennai.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras

Crl.A.No.384 of 2012

A.SK(02/12/2019)



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