

BAIL SLIP

The Petitioner/Accused Viz., Ravi @ Ravichandran, S/o.Kunjan @ Kaliyaperumal be and hereby was directed to be released on bail as per Order of this Court, dated 24.08.2012 and made in CrI.M.P.No.1 of 2012 in CrI.A.No.518 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI. A.No.518 of 2012

Ravi @ Ravichandran ... Appellant / Accused

Vs.

State Rep.by,
The Inspector of Police,
T.Palur Police Station,
Ariyalur District.
(Crime No.216/2008) ... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374 (2) Cr.P.C praying to call for the records and set aside the conviction and sentence imposed vide judgment and order dated 26.07.2012 in S.C.No.40 of 2012 on the file of the Principal District and Sessions Court, Ariyalur District.

For Appellant : Mr.K.Gandhi Kumar

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (CrI.Side)

J U D G M E N T

This Criminal Appeal has been filed by the appellant to set aside the conviction and sentence imposed on him vide judgment and order dated 26.07.2012 passed in S.C.No.40 of 2012 on the file of the Principal District and Sessions Court, Ariyalur District.

2. The brief facts leading to the filing of this criminal appeal are as follows:

2.1. The case of the prosecution is that the deceased Revathi, who was the wife of the appellant, committed suicide by hanging on 15.12.2008 at 3.00 p.m., in her matrimonial home due to cruelty meted out by the appellant.

2.2. On a written complaint (Ex.P.1) lodged by Sarathambal (P.W.1), mother of Revathi, Balasubramaniyan (P.W.11) Sub-Inspector of Police, registered a case in Cr.No.216 of 2008 on 15.12.2008 under Section 174 Cr.P.C. and prepared a printed F.I.R (Ex.P.4).

2.3. Investigation of the case was taken over by Kaja Mohaideen (P.W.16), Deputy Superintendent of Police, Ariyalur, who prepared the observation mahazar (Ex.P.10) and rough sketch (Ex.P.11).

2.4. The inquest was conducted by Ramasamy (P.W.12), Revenue Divisional Officer, who, in his evidence as well in the inquest report (Ex.P.5), has stated that there was no dowry harassment, but, there is suspicion in the death of Revathi which requires a thorough investigation.

2.5. Dr.Ravishankar (P.W.13) performed autopsy on the body of the deceased and sent her visceral samples to the Tamil Nadu Forensic Sciences Laboratory for chemical examination. In the Viscera Report (Ex.P.7), no poison was detected in the visceral organs. The postmortem doctor did not find any external injury on the body of the deceased, except ligature mark around the neck. Dr.Ravishankar (P.W.13), in his evidence as well in the postmortem report (Exs.P.6 and P.9), has opined that the deceased would appear to have died of asphyxia due to antemortem hanging.

2.6. After recording the statement of witnesses and collecting various reports, the Investigating Officer filed a final report in P.R.C.No.16 of 2009 before the Judicial Magistrate, Jeyankondam, against the appellant for the offences under Section 498-A and 306 IPC.

2.7. On appearance of the appellant, the provisions under Section 207 Cr.P.C were complied with and the case was committed to the Court of Session in S.C.No.40 of 2012 for trial.

2.8. The trial Court framed charges under Sections 498-A and 306 IPC against the appellant. When questioned, he pleaded "not guilty".

2.9. To prove the case, the prosecution examined 16 witnesses, marked 14 exhibits and one material object.

2.10. After considering the evidence on record and on hearing either side, the trial Court, by judgment and order dated 26.07.2012 in S.C.No.40 of 2012, convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
498-A IPC	Rigorous Imprisonment for 3 years and fine of Rs.3,000/- in default to undergo rigorous imprisonment for 6 months.
306 IPC	Rigorous Imprisonment for 7 years and fine of Rs.5,000/- in default to undergo rigorous imprisonment for one year.

2.11. Challenging the aforesaid conviction and sentences, the appellant is before this Court.

3. Heard Mr.K.Gandhi Kumar, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing on behalf of the respondent police.

4. The learned counsel for the appellant submitted that there is no iota of evidence to hold that the appellant had committed acts of cruelty on the deceased and had abetted her suicide.

5. Per contra, the learned Government Advocate (Crl.Side) refuted the contention put forth by the learned counsel for the appellant.

6. This Court gave its anxious consideration to the rival submissions.

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

a) The deceased was the wife of the appellant and they had two children, viz., Aravind (PW.14) and Abinaya (not examined).

b) The parents and brother of the appellant were residing next door;

c) Revathi's death was on account of suicide.

8. At the outset, it may be necessary to state that the prosecution has failed to prove the date of marriage of the appellant with Revathi. Sarathambal (PW.1), in her complaint

(Ex.P.1) as well in her evidence, has stated that the marriage was solemnized about 6 years ago. Apart from this, there is no evidence to show as to when their marriage was actually solemnized. On such an evidence, this Court cannot infer that the marriage was solemnized within seven years of suicide so as to invoke the presumption under Section 113-A of the Evidence Act. It is trite that when there is any doubt on a particular aspect of the prosecution case, the benefit of it should be extended to the accused. Therefore, the aid of Section 113-A, *ibid*, cannot be pressed into service in this case. Of course, even without the aid of the Section 113-A, *ibid*, if it is shown that the cruelty perpetrated by the appellant was of such a nature that, it pushed his wife to take the extreme stage of ending her life, conviction under Section 306 IPC can be given. The evidence in this case falls short of this pre-requisite to sustain the conviction under Section 306 IPC.

9. Sarathambal (PW.1), in her evidence, has stated that the appellant would demand money from his wife for drinking and that he would beat her if she refuses to meet his demand. As rightly pointed out by the learned counsel for the appellant, this was not stated in the complaint (Ex.P.1) and it appears to be an improvement.

10. However, learned Government Advocate (Crl.Side) submitted that the appellant, in his statement to the Revenue Divisional Officer, which has been marked along with the inquest report (Ex.P.5), has stated that he used to take liquor and that he had slapped his wife on the previous day of the incident and therefore, there is a material to show that he had inflicted cruelty on her.

11. The learned counsel for the appellant placed strong reliance on the decision in *Gunasekaran Vs. State* By the Inspector of Police, Perambalur Police Station, Perambalur District [Crl.A.No.930 of 2007, decided on 02.12.2016], wherein, it has been held as follows:

"41. A statement given by a witness to a Revenue Divisional officer under Section 176 r/w. Section 174 Cr.P.C is also a 'previous statement'. It is not a 'Substantiative piece of evidence'. Because it is not recorded before the trial Court on oath. It is recorded 'elsewhere'. It is recorded outside the Court, namely, before the R.D.O. It is also like a statement given to a Police Officer during inquest under Section 174 Cr.P.C. The only difference is instead of a Police Officer a Revenue Official conducts the inquest and the inquiry thereon. After his enquiry, the R.D.O. Submits his (inquest) report."

12. This Court is unable to persuade itself to concur with the above observation. The statement made to an Executive Magistrate, who is not a police officer, does not suffer the vice of the statement made to a Police Officer under Section 161 Cr.P.C. In this context, it may be profitable to allude to the judgment of this Court in In Re: Ramasamy Reddiar (AIR 1953 Mad 138) and Arulvelu Vs. State [2017 (2) MLJ (Cr1) 257], wherein, this Court has clearly held that such a statement can be used either to corroborate or contradict the deponent's version, when he is in the witness box. Of course, such a statement is not a substantive piece of evidence. However, an incriminating admission made by the accused which does not amount to a confession, is relevant under Section 21 of the Evidence Act against the maker.

13. Aravind (PW.14), son of the appellant, in his evidence, has stated that on the day preceding his mother's death, there was a quarrel between his parents; the reason for the quarrel was that his mother refused to cook food for the family and that his paternal junior uncle, who himself was sick, did the cooking; when this was questioned by the appellant, Revathi, in a fit of rage, broke the mirror; on the next day, he saw his father beating his mother. In fact, these answers were elicited by the defence in the cross-examination.

14. Thus, the evidence of the prosecution witnesses generally show that there used to be quarrel between the spouses for good and bad reasons and in such quarrels, the appellant used to beat his wife. Hence, it cannot be stated that the evidence on record falls short of the requirements of the offence under Section 498-A IPC, though it is insufficient for fastening criminal liability on the appellant under Section 306 IPC.

15. In view of the foregoing discussion, the conviction of the appellant of the offence under Section 306 IPC and the sentence therefor are set aside. However, the conviction imposed on the appellant by the trial Court for the offence under Section 498-A IPC is confirmed, but the sentence is reduced to two years rigorous imprisonment. The appellant will be entitled to set off under Section 428 Cr.P.C.

In the result, this criminal appeal is partly allowed. The trial Court is directed to secure the appellant and commit him to prison to undergo the sentence.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District & Sessions Judge,
Ariyalur District.
2. The Inspector of Police,
T.Palur Poice Station,
Ariyalur District.
3. The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.
4. The Judicial Magistrate,
Jayamkondan.
5. - do - through The Chief Judicial Magistrate, Perambalur.
6. The Superintendent, Central Prison, Trichy.

copy to: The Section Officer,
Criminal Section, High Court, Madras.

+1 cc to Mr.K.Gandhi Kumar, Advocate, S.R.No.78882

Cr1. A.No.518 of 2012

PA(CO)
SSM(05/11/2019).

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