

Bail Slip

The Appellant herein/Accused Viz., Rajendran, S/o Kuttivel, was directed to be released on bail as per the order of this Court dated 05/09/2012 made in CrI.M.P.No.1/2012 in CrI.A No.554/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
27.11.2019	03.12.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL. A. NO. 554 OF 2012

Rajendran ... Appellant/Accused

- Vs -

State by
The Inspector of Police
Poonamallee Police Station
Poonamallee, Chennai 600 056.
Crime No.603/2008 ... Respondent/Complainant

Prayer:Criminal Appeal filed u/s 374 (2) of the Code of Criminal Procedure, against the judgment and order dated 05.04.2011, passed by the learned Addl. Sessions Judge, (Fast Track Court No.I) Poonamallee, in S.C. No.230/2010.

For Appellant : Mr. V.S.Jagadeesan

For Respondents : Ms. Kirtika Kamal. P, GA
(Crl. Side)

JUDGMENT

The present appeal has been preferred against the judgment of conviction dated 5.4.2011 rendered by the Addl. Sessions Judge (Fast Track Court), Poonamallee in S.C. No.230/2010.

2. The case of the prosecution could be briefly stated as under :-

The deceased, Mary, was the wife of the appellant and the couple were living at No.4, Sepoy Nagar, 2nd Street, Kumananchavadi, Poonamallee, in the flat belonging to the

appellant. The couple have a son Sathish (P.W.1) and two daughters. Sathish (P.W.1) grew in the house of Sakunthala (P.W.2), his maternal grandmother and the mother of the deceased at No.13, Lakshmipuram, Villivakkam, Chennai.

3. It is alleged that the appellant would come drunk and beat his wife for money due to which Mary committed suicide by self-immolation on 8.8.08 around 9.00 a.m. in her matrimonial home. On getting information, Sathish (P.W.1) and Sakunthala (P.W.2), rushed to the place of occurrence and took the deceased, Mary to the Kilpauk Medical College Hospital, where she was admitted as in-patient in the burns ward. While she was under treatment, her statement was recorded by the police on the certification of Dr. Angeline Selvaraj (P.W.7) that "the patient was conscious throughout the period of recording". On the written complaint, Ex.P-1, given by Sathish (P.W.1), the police registered a case in Crime No.603/2008 u/s 498-A IPC and prepared printed FIR, Ex.P-8 on 8.8.08 at about 2300 hours. Investigation of the case was taken over by the Inspector of Police, Chandrasekaran (P.W.9), who went to the place of occurrence and prepared observation mahazar, Ex.P-9 and rough sketch, Ex.P-10. From the place of occurrence, he seized a white plastic can, M.O.1, a match box, M.O.2 and two burnt match sticks, M.O.3 under mahazar, Ex.P-11. Mr.K.Ravi, the 7th Metropolitan Magistrate came to the hospital for recording the dying declaration of Mary, but found that she was under sedation and was not in a fit condition to give any statement. The said record is marked as Ex.P-14. Mary succumbed to the injuries on 10.8.08 and, thereafter, the case was altered to one u/s 498-A and 306 IPC. Chandrasekaran (P.W.9), the Inspector of Police, conducted inquest over the body of the deceased and prepared inquest report, Ex.P-15.

4. Dr.Kuppusamy (P.W.8), performed autopsy on the body of the deceased and in his evidence as well as in the post-mortem certificate, he opined that the deceased would appear to have died of Hypovolumic shock due to burns (60%).

5. After transfer of Chandrasekaran (P.W.9), Velan (P.W.10), the Inspector of Police, who succeeded P.W.9 continued the investigation and after completion of the investigation filed the final report in P.R.C. No.25/10 before the Judicial Magistrate No.II, Poonamallee, for the offence u/s 306 and 498-A IPC against the appellant.

6. On appearance of the appellant, the provisions of Section 207 Cr.P.C. was complied with and the case was committed to the Court of Session and was made over to the Additional Sessions Court (Fast Track Court No.1), Poonamallee, for trial.

The trial court framed a charge u/s 306 IPC against and appellant and when questioned, the accused pleaded not guilty.

7. to prove the case, the prosecution examined P.W.s 1 to 10 and marked Exs.P-1 to P-16 and M.O.s 1 to 3. When the appellant was questioned u/s 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. Neither any witness was examined nor any document marked on the side of the appellant. After considering the evidence on record and hearing either side, the trial court, by judgment and order dated 5.4.11, in S.C. No.230/2010, convicted the appellant of the offence u/s 306 IPC and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one year. Challenging the said conviction and sentence, the appellant is before this Court.

8. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl. Side) appearing for the State and perused the materials available on record.

9. The prosecution has proved beyond cavil the following facts :-

- (i) The deceased Mary was the wife of the appellant and they were living in Kumananchavadi;
- (ii) Their son, P.W.1, was living with P.W.2 in Villivakkam; and
- (iii) Mary committed self-immolation on 8.8.08 and died on 10.8.08.

10. P.W.1, in his evidence, has stated that his mother and father were living in Kumananchavadi; he was living with his maternal grandmother in Villivakkam and is an auto driver; his father would consume liquor and abuse and beat his mother; on 8.8.08 he received information that his mother had committed self-immolation and so he rushed along with his grandmother to her house; from there he took his mother to the hospital and admitted her in Kilpauk Medical College Hospital and two days later she died. He has further stated that while his mother was in the hospital, she told him that she set herself on fire because his father had beaten her and had refused to give any money even for household expenses. He has also stated that he gave the complaint, Ex.P-1.

11. In the cross-examination, he has further reiterated that his mother was never happy with his father because his father used to beat her and torture her for money. It was suggested to P.W.1 that his mother was pestering his father to sell the house and go and settle in Villivakkam for which his

father was not agreeable and, therefore, she committed suicide, which suggestion, he denied.

12. Sakunthala (P.W.2), the mother of the deceased, has generally corroborated the evidence of P.W.1 by saying that the appellant used to frequently beat Mary for money. She has further stated that before the incident, Mary came to her asking for money and she gave a five sovereign jewel to Mary for pledging. In the cross-examination, she admitted that the appellant was also related to her. In cross-examination, she has stated that the couple were happy one year prior to her death. She has also stated that she used to intervene and question the appellant whenever her daughter complained to her about the harassment meted out by the appellant. In cross-examination, she has specifically stated that on one occasion, while she was in Kumananchavadi house of Mary, the appellant came drunk and abused Mary.

13. Coming to the statement, Ex.P-6, given by Mary to the police wherein she has clearly stated about the cruelty inflicted on her by the appellant and has further stated that on 8.8.08, when she asked him money for buying provisions, he not only abused her, but took away whatever little money she was having and, therefore, due to frustration, she committed self-immolation.

14. Learned counsel for the appellant vehemently attacked the dying declaration, Ex.P-6, by contending that the police constable, who recorded the statement was not examined by the prosecution and that Dr. Angeline Selvaraj (P.W.7) has stated in cross-examination that she did not record the statement and that she also does not know who recorded the statement and, therefore, no reliance could be placed on the said document.

15. It is true that the prosecution has miserably failed to prove the dying declaration, Ex.P-6, in the manner known to law. However, the evidence of P.W.s 1 and 2 show that Mary had told them in the hospital that she committed self-immolation because the appellant was not giving her money for running the family. This statement of Mary to P.W.s 1 and 2 would also amount to a dying declaration. This court has no reason to disbelieve the evidence of P.W.s 1 and 2 that Mary committed suicide because of her husband's harassment. Further, when the appellant was questioned u/s 313 Cr.P.C., he did not come out with any plausible explanation as to the circumstances under which his wife committed self-immolation. The evidence of P.W.1 shows that when he came to the place of occurrence, the appellant was there. The appellant had not taken any steps to rush his wife even to the hospital. Mary was taken to the hospital only after P.W.s 1 and 2 rushed to Kumananchavadi from Villivakkam.

16. Learned counsel appearing for the appellant submitted that there was no mens rea or intention for the appellant for abetting the suicide of his wife. Learned counsel also contended that there was no independent witness to support the prosecution case.

17. It is fairly well settled that if a lady commits suicide due to prolonged harassment and cruelty by her husband, it would tantamount to an offence u/s 306 IPC. In this case, P.W.1 is none other than the son of the appellant, who has given evidence against him and he has no axe to grind against the appellant.

18. Further, the defence set up by the appellant that Mary wanted her husband to sell the flat and settle with her mother at Villivakkam and that the appellant was not agreeable and that was the reason for her suicide has been rightly rejected by the trial court, as the said defence, in the light of the evidence available on record, does not appear plausible.

19. This Court is, therefore, of the considered opinion that the prosecution has proved the case beyond doubt and this Court finds no infirmity in the conviction of the appellant for the offence u/s 306 IPC. However, considering the facts and circumstances of the case, this Court is of the view that the substantive sentence of rigorous imprisonment of seven years could be modified and reduced to rigorous imprisonment for a period of three years.

20. This Court confirms the conviction of the appellant in S.C. No.230/2010 recorded by the Addl. Sessions Court (Fast Track Court), Poonamallee, however, the substantive sentence imposed on the appellant for a period of seven years is set aside and instead the appellant is sentenced to undergo rigorous imprisonment for a period of three years. Fine amount imposed by the trial court stands confirmed.

21. The criminal appeal is allowed in part with the above modification is sentence alone. It is reported that the appellant is on bail. The trial court is directed to take steps to secure the presence of the appellant and commit him to prison to undergo the balance portion of the sentence imposed on him.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Addl. Sessions Court
(Fast Track Court-I), Poonamallee.

2. The Public Prosecutor
High Court, Madras.

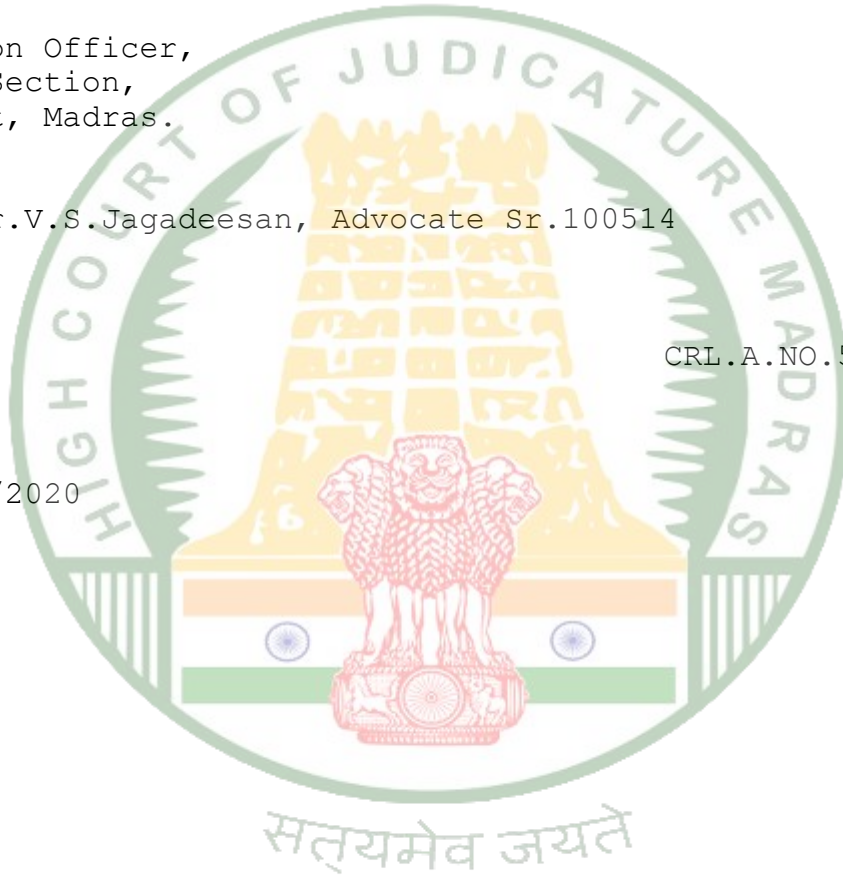
Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.V.S.Jagadeesan, Advocate Sr.100514

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