

Bail Slip

The Appellant/Accused, namely Umapathy Alias Shankar S/o. Nagarajan, was directed to be released on bail as per order dated 21.06.2013 made in CRL MP.NO.1/13 IN CRL A.NO.435/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.435 of 2013

Umapathy Alias Shankar ... Appellant/Accused
S/o.Nagarajan

Vs.

The Assistant Commissioner of Police
Washermanpet Range
Chennai ... Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C., to call for the records in S.C.No.231 of 2010 on the file of Mahila Court, Chennai and set aside the conviction and sentence of the appellant under Section 306 and 498A IPC.

For Appellant : Mr.Ramesh Kumar Chopra
For Respondent : Ms.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

J U D G M E N T

This appeal is directed against the judgment and order of conviction and sentence dated 17.04.2013 passed by the Mahila Court, Chennai in S.C.No.231 of 2010.

2. The deceased Sasikala was the daughter of Adilakshmi (PW1) and Sengotuvel (PW2). They hail from Periyannatham Village in Chengalpattu District. Sasikala was married to the appellant on 04.02.2004 and after marriage, they lived in Door No.26/17, Double Pit Lane, Tondiyarpet, Chennai, which is around 70 kms from Periyannatham Village. The couple were blessed with a girl child in the year 2005.

3. It is the case of the prosecution that at the time of marriage, the parents of Sasikala agreed to give 6 sovereigns of gold, but gave only 5 sovereigns and promised to give the balance one sovereign later, but did not give it and so, the appellant tortured Sasikala for it. Unable to withstand which, Sasikala committed suicide by self-immolation by dousing with kerosene in her matrimonial home on 25.04.2009 at

01.00pm. Immediately, the appellant rushed her to the Kilpauk Medical College Hospital where she was examined by Dr.Rajasekaran (PW10), who made the necessary entries in the Accident Register (P5) and admitted her to the burns ward for treatment. She was found with 80% burns. On getting information, the family members of Sasikala came to Chennai and on the written complaint (Ex.P1) given by Adilakshmi (PW1), the mother of Sasikala, Sowrinathan (PW13), Inspector of Police, registered a case in Crime No.192 of 2009 under Section 309 IPC on 25.04.2009 at 17.00. Later, Sasikala succumbed to the injuries on the same day at 17.50 hours in the Kilpauk Medical College Hospital and therefore, the case was altered to one under Section 174 Cr.P.C vide alteration report (Ex.P12).

4. Since the death of Sasikala was within 7 years of marriage, Balusami(PW11), the Executive Magistrate, conducted inquest, examined the parents of Sasikala and the appellant in the presence of Panchayatdhars and filed the Inquest report (Ex.P8). Balusami (PW11) in his evidence as well in the inquest report has stated that the death of Sasikala was due to dowry harassment. After the inquest report, the case was again altered to one under Sections 498-A and 304-B IPC. The body was sent for post-mortem and the post-mortem certificate Ex.P13 shows that Sasikala appeared to have died of shock due to burns. No dying declaration of Sasikala was recorded. The appellant was arrested by the police on 03.05.2009 at 12 hours. After examining witnesses and collecting various reports, Rajaram (PW14), Assistant Commissioner of Police, filed a final report in P.R.C.No.27 of 2010 before the XV Metropolitan Magistrate, George Town, Chennai under Sections 498-A and 304-B IPC and alternatively under Section 306 IPC against the appellant.

5. On appearance of the appellant, the case was committed to the Court of Session, Chennai in S.C.No.231 of 2010 and was made over to the Mahila Court, Chennai for trial. The trial Court framed charges under Section 498-A and 304-B IPC and an alternate charge under Section 306IPC was also framed.

6. When questioned, the appellant pleaded 'not guilty'. To prove the case, the prosecution examined 14 witnesses, marked Exs.P1 to P13 and MO1 to MO3. When the appellant was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same and did not offer any explanation. No witness was examined on the side of the appellant nor any document marked.

7. After considering the evidence on record and hearing either side, trial Court by judgment and order dated 17.04.2003 in S.C.No231 of 2010 acquitted the appellant of the offence under Section 304-B IPC, but convicted and sentenced him as under:

Provision under which convicted	Sentence
Section 498-A IPC	Three years rigorous imprisonment and fine of Rs.5000/-, in default to undergo three months simple imprisonment
Section 306 IPC	Ten years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 6 months simple imprisonment

8. Challenging the conviction and sentence, the appellant has filed the present appeal.

9. Heard Mr. Ramesh Kumar Chopra, learned counsel for the appellant and Ms. Kritika Kamal, learned counsel Government Advocate (Criminal Side) appearing for the respondent.

10. Adilakshmi (PW1) and Sengotuvel (PW2), the parents of deceased Sasikala have stated about the marriage of the appellant with Sasikala on 04.02.2004 and have also stated that the appellant demanded 6 sovereigns of gold and Rs.5,000/- as cash, but they gave only 5 sovereigns of gold and Rs.5000/- cash and promised to give the balance one sovereign later. They have further stated that since one sovereign gold was not given by them, the appellant, after consuming liquor, tortured Sasikala and did not even come for the wedding of her sister. Indira (PW3), Selvi (PW4), Gnanasundari (PW5) and Tamilvendan (PW6), who hail from Periyannatham village and known to the family of the deceased, have stated that even at the time of marriage, there was a dispute with the appellant with regard to one sovereign of gold and that Sasikala used to come to her natal village and told them about the sufferings she underwent at the hands of the accused. They have also stated that the accused was addicted to liquor.

11. Mr. Chopra, learned counsel for the appellant contended that in the complaint (Ex.P1) that was given by Adilakshmi (PW1), she had not said a word about the demand of one sovereign gold by the appellant or about any cruelty. He further contended that even in the statement (Ex.P2) that was given by PW1 and PW2 to the Executive Magistrate during inquest, they have not stated about the demand of one sovereign gold by the appellant. Therefore, he contended that in the anxiety to implicate the appellant, PW1 to PW6 had improved the case by alleging that the demand of one sovereign persisted from the date of marriage to the date of suicide. He also contended that PW3 to PW6 were the neighbours of PW1 and PW2 and they naturally supported PW1 and PW2.

12. Per contra, learned Government Advocate submitted that just because Adilakhsmi (PW1) had not stated in the complaint about the harassment meted out to the deceased, the entire prosecution evidence cannot be jettisoned because at that time, the parents of the deceased would have been in a state of grief. The First Information Report cannot be treated as an encyclopedia of the prosecution case. However, as pointed by Mr.Chopra, even in the statement given by PW1 and PW2 to the Executive Magistrate during inquest, they have not stated even a word about the demand of one sovereign by the appellant. They only alleged that he is addicted to liquor, did not go for work and was harassing Sasikala for more dowry.

13. Of course, the trial Court has rightly acquitted the appellant of the charge under Section 304-B IPC, because there are no credible materials to show that there was demand of dowry by the appellant in connection with the marriage especially in the light of the fact that PW1 and PW2 had not stated anything about it either in the complaint (Ex.P1) or in the statement given to the Executive Magistrate (Ex.P2). However, there is sufficient evidence to show that the appellant was addicted to liquor and was subjecting Sasikala to cruelty, which had pushed her to commit suicide. Sasikala's death was suicide by self-immolation has been established by the prosecution beyond cavil. The appellant has also not denied the fact that the death was a suicide. Unless she was subjected to cruelty, there is no good reason for her to commit suicide leaving behind a 3 ½ years old child. A week prior to committing suicide Sasikala had telephoned to the house of Gnanasundari (PW5) and had spoken to her parents. This fact has been spoken by both PW1 and PW2 and corroborated by PW5 who has stated that at that point of time, there was no telephone or mobile with PW1 and PW2 and since she (PW5) had a telephone connection, Sasikala called to her house and spoke to her parents. In that conversation also, Sasikala has complained about the cruelty suffered by her at the hands of the appellant. Thus, there are sufficient materials to hold that Sasikala was subjected to cruelty by the appellant, who was addicted to liquor and was not going for work. PW1 and PW2 have stated that Sasikala was working as a Tailor in an export garment factory and was managing the family with her income. Appellant was a parasite on Sasikala's earnings, he being addicted to liquor. In the light of such evidence, no material has been placed by the appellant to discharge the burden under Section 113A of the Evidence Act.

14. Mr.Chopra, learned counsel for the appellant placed reliance on the judgment of the Supreme Court in Rajbabu and another Vs. State of M.P dated 24.07.2008 (CrI.A.No.895 of 2003) and submitted that the mere fact a woman committed suicide within 7 years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted

by her husband. In the same judgment, Hon'ble Supreme Court has stated that the Court is required to look into all the other circumstances of the case.

15. As alluded to above, the other proved circumstances in this case are that the appellant was not going for work, addicted to liquor and was living on the income of Sasikala and torturing her for more money. Therefore, this Court does not find any infirmity in the conviction of the appellant.

16. Mr.Chopra, learned counsel for the appellant prayed for leniency in sentence by submitting that the child is with the appellant and the appellant has reformed.

17. Taking these facts into consideration, this Court is of the view that in the interests of justice, 10 years of rigorous imprisonment imposed by the Court below for offence under Section 306 IPC can be reduced to three years of rigorous imprisonment.

In this result, this Criminal Appeal is partly allowed. The conviction of the appellant stands confirmed and sentence imposed for the offence under Section 498-A IPC is also confirmed, but the sentence imposed for the offence under Section 306 IPC is reduced to 3 years rigorous imprisonment, which shall run concurrently.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gpa
To

- 1.The Mahila Court,Chennai
2. The Assistant Commissioner of Police
Washermanpet Range,Chennai
- 3.The XV Metropolitan Magistrate, George Town, Chennai
- 4.The Chief Metropolitan Magistrate,Egmore, chennai
- 5.The Superintendent , Central Prison,Puzhal, chennai
- 6.The Director General of Police, chennai 4
- 7.The Public Prosecutor
Madras High Court, Chennai
- 8.The District Collector, chennai
- 9.Copy to: The Section Officer,
Criminal Section,
High Court,Madras
+1cc to Mr.Ramesh kumar , Advocate SR.No. 89403

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