

BAIL SLIP

That the Appellant/Accused namely was released on bail as per order of this court dated 24.06.2013 in MP.No.1 of 2013 in Crl.A.No.439 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CRL.A.NO.439 OF 2013

M.Uma Shankar ... Appellant/Accused

Vs.

State represented by
Inspector of Police
P-5, M.K.B Nagar Police Station
Chennai - 39 ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure to set aside the judgment of the Mahila Sessions Judge, Chennai in S.C.No.294 of 2011 dated 20.05.2013.

For Appellant : Mr.A.Palaniappan

For Respondent : Ms.P.Kritika Kamal
Government Advocate

JUDGMENT

This Criminal Appeal has been preferred challenging the judgment of the Mahila Sessions Judge, Chennai dated 20.05.2013 made in S.C.No.294 of 2011.

2. The date of suicide of the appellant's wife Manimekalai is 27.01.2008. They got married 6½ years before and were blessed with two children, Harish and Sadhana. The couple were living in the ground floor portion of the house at No.32, MPM Street, Sanjay Nagar, Vyasarpadi, Chennai-600 039, which belonged to the father of Manimekalai. The parents of Manimekalai were living in the first floor portion in the same house. The appellant was running a printing press in Broadway. While he was away from home on 27.01.2008, Manimekalai doused

herself with kerosene and set fire. On hearing her shrieks, her parents, who were in the first floor, rushed down and admitted her to the Kilpauk Medical College Hospital for treatment.

3. On intimation, Vijayan (PW15), Sub-Inspector of Police, went to the hospital and recorded the statement (Ex.P1) of Manimekalai in the presence of Dr.R.Gopinath (PW11) in which she has stated that her husband would come drunk and beat her and hence she committed self-immolation. Based on the said statement, the police registered a case in Crime No.27 of 2008 under Section 309 IPC and prepared the printed FIR (Ex.P17). Intimation was sent to the Metropolitan Magistrate for recording her dying declaration and accordingly, Mr.Arunachalam (Metropolitan Magistrate) came to the hospital and recorded the statement of Manimekalai, which was marked as Ex.P15. In that statement, she has not implicated the appellant and has only stated as follows (Free English Translation):

"Today at 05.30pm when I was at home on account of my mental disturbance, I poured kerosene myself and set fire and no one is responsible for this. Earlier also I attempted to commit suicide by hanging, but my father saved me. At that time my husband had gone to the printing press for some work and he was not available at that time."

4. Manimekalai succumbed to the injuries on 30.01.2008 at 04.30pm. Pursuant to her death, the case was altered from one under Section 309 IPC to Section 174 (3) Cr.P.C. Since the death was within 7 years of marriage, inquest was conducted by Paulsingh (PW13), Revenue Divisional Officer, who in his evidence as well in the inquest report, has stated that the death was not due to dowry harassment, but on account of cruelty meted out to the deceased. It may be relevant to state here that during enquiry by the Executive Magistrate, the parents of Manimekalai, namely Selvamani (PW1) and Saraswathy (PW2), were examined and they have clearly stated that the couple were living very happily and had not made any allegations against the appellant. Dr.Kuppusamy (PW12) performed autopsy on the body of the deceased, who in his evidence as well in the postmortem report (Ex.P9), has stated that she had 66% of burns. He has also stated that Manimekalai would appear to have died on complications due to burns (66%). The appellant was arrested on 22.04.2008. After completing the investigation, the police filed a final report in P.R.C.No.148 of 2010 before the X Metropolitan Magistrate, Egmore, Chennai. The case was committed to the Court of Session in S.C.No.294 of 2011 and was made over to the Mahila Court, Chennai for trial. The trial Court framed charges under Sections 498-A and 306IPC. When questioned, the appellant pleaded 'not guilty'.

5. To prove the case, the prosecution examined 18 witnesses, marked Ex.P1 to Ex.20 and two material objects. In the cross-examination of PW1, the defence marked the Guardian OP petition that was filed by the appellant seeking custody of his two children from the parents of the deceased. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 20.05.2013 in S.C.No.294 of 2011, acquitted the appellant of the charge under Section 306 IPC, but convicted under Section 498-A IPC and sentenced him to undergo three years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo 3 months simple imprisonment. Challenging the conviction and sentence, the appellant has preferred the present appeal.

6. Heard learned counsel for the appellant and learned Government Advocate (Crl.Side) for the respondent.

7. The learned counsel for the appellant submitted that Manimekalai was suffering from depression and she had a suicidal tendency and that had propelled her to commit self-immolation. He further contended that during the enquiry by the Executive Magistrate, the parents of Manimekalai, namely PW1 and PW2 have unequivocally stated that the couple were living very happily and apart from ordinary wear and tear, there were no serious issues between them and that they themselves do not know the reason why Manimekalai committed suicide. The learned counsel further pointed out to this Court the specific statement of Saraswathy (PW2) to the Executive Magistrate (Ex.P3) that when she asked Manimekalai as to why she committed self-immolation, she told her that she was hearing voices, which exhorted her to commit suicide. Learned counsel further contended that till the investigation was being done by Jayakumar (PW16), Assistant Commissioner of Police, the case was proceeding in favour of the appellant, but the trouble started after the appellant filed the Guardian Original Petition in O.P.No.867 of 2008 in the Family Court, Chennai against his parents-in-law for the custody of the two children, who were taken by them after Manimekalai's death.

8. Per contra, learned Government Advocate refuted the contentions and submitted that even in the dying declaration that was given to the police (Ex.P1), Manimekalai stated about the cruelty suffered by her.

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

10. In this case, the appellant has been acquitted of the charge under Section 306IPC and therefore, this Court is now required to find out whether there are satisfactory materials to

confirm the conviction under Section 498-A IPC. The prosecution has proved beyond cavil the marriage of the appellant with Manimekalai, the birth of two children for them, they living in the ground floor portion of PW1's house, PWs 1 and 2 were living in the first floor portion and the suicide of Manimekalai on 27.01.2008 by self-immolation.

11. It is true that in the dying declaration that was given by Manimekalai to the police (Ex.P1) she has stated that her husband would come drunk and subject her to cruelty. However, on the same day, in the dying declaration given to the Magistrate, she has clearly stated that she was mentally disturbed on that day and therefore, committed self-immolation. She has also stated that earlier she attempted to commit suicide by hanging, but she was saved by her father. In the second dying declaration, there is absolutely no whisper about any cruelty by the appellant.

12. Bearing this in mind, if we analyse the evidence of PW1 and PW2, the parents of Manimekalai, they have stated to the Executive Magistrate during inquest that the couple were very happily living except for occasional quarrels, which they themselves would settle. This previous statement was confronted to the witnesses in terms of Section 145 of the Evidence Act and was also proved via the evidence of Paulsingh (PW13), the Executive Magistrate. That apart, the police have recorded the first statement of these witnesses on 27.01.2008 and even in that statement, they had not implicated the appellant at all. This contradiction in their evidence has also been elicited as mandated in Section 145 of the Evidence Act by confronting it with the witnesses and eliciting it from the Investigating Officer.

13. There appears to be sufficient force in the submission of learned counsel for the appellant that the trouble for the appellant started after he filed the guardian original petition. The Guardian Original Petition was filed in the Family Court on 12.03.2009 as could be seen from the Court seal thereon. The Family Court took the petition on file and ordered notice to PW1 and PW2, who were shown as respondents therein, returnable by 23.04.2009 and PW1 was confronted with this petition. He accepted the same and only through him, a certified copy of the petition along with adjudications thereon were marked as Ex.D1. The evidence of Mannarmannan (PW17), the Inspector of Police shows that the investigation was initially conducted by Jayakumar (PW16), Assistant Commissioner of Police and on his transfer, he handed over the case on 15.04.2008 to Mannarmannan (PW17) for continuing the investigation, because the Revenue Divisional Officer's report had exonerated the appellant of dowry harassment. Only after Mannarmannan (PW17) took up the

investigation of the case, further statements were recorded from PWs 1 and 2 to the effect that the appellant committed acts of cruelty on his wife and the appellant was arrested on 22.04.2008, which is one day prior to the date on which the parties were required to appear before the Family Court, Chennai for the Guardian OP petition. Thus, on a conspectus of facts obtaining, this Court is of the view that with such contradictions galore, the materials are too insufficient to sustain the conviction of the appellant of the offence under Section 498-A IPC.

14. Ms.Kritika Kamal, learned Government Advocate, submitted that the statement of Manimekalai to her mother that she heard some voices exhorting her to commit suicide and that is why she committed self-immolation is a dying declaration, but the same has not been proved in a manner known to law.

15. In the opinion of this Court, the defence should have taken advantage of this statement and should have confronted (PW2) to prove it through the Executive Magistrate (PW13). It is indeed very sad that the defence had failed to take advantage of a sterling piece of evidence that in their favour.

In the result, this Criminal Appeal is allowed and judgment of the Mahila Sessions Judge, Chennai in S.C.No.294 of 2011 dated 20.05.2013 is set aside. The appellant is acquitted of all charges. Fine, if any, paid shall be refunded to the accused.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The X Metropolitan Magistrate,
Egmore, Chennai.
2. Do Thro The Chief Judicial Magistrate,
Egmore, Chennai.
3. Mahila Sessions Judge
Chennai
4. The Inspector of Police,
P5 MKB Nagar Police Station, Chennai-39.

5. The Public Prosecutor,
High Court, Madras - 600 104.

+1cc to Mr.A.Palaniappan, Advocate, S.R.No.90349

Cr1.A.No.439 of 2013

MG(CO)
CS/03/12/2019



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