

Bail Slip

The Appellant/Accused viz S. Prakash S/o. Shankar was directed to be released on bail as per order dated 22.07.2013 in Crl.M.P.1/2013 in Crl.A.No.482/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.482 of 2013

S.Prakash .. Appellant/Accused

Vs.

State Represented by
Inspector of Police
Valasarawalkam Police Station
Chennai

.. Respondent/Complainant

Criminal Appeal filed under Section 394 Cr.P.C., against the judgment dated 25.06.2013 passed in S.C.No.63 of 2012 by the Additional District and Sessions Judge, III Additional District Court, Thiruvallur at Poonamallee.

For Appellant : Mr.C.D.Sugumar

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 25.06.2013 passed by the III Additional District and Sessions Judge, Thiruvallur, Poonamallee in S.C.No.63 of 2012.

2. The prosecution story is as follows:

2.1. The deceased Kamatchi was married to Prakash (appellant) some time in the year 1999. After marriage, the couple lived in Door No.21A, Anna Street, Valasaravakam, which belongs to Kamatchi's father. In another portion of the same house, Kamatchi's sister Visalakshmi, wife of Saravanan, was living with her family. The deceased was blessed with two children, Satheesh and Vidya, who were aged 9 years and 6 years respectively, at the time of incident.

2.2. The deceased Kamatchi's father took a shop for rent in Kumananchavadi where the appellant was running a grocery shop. When there was expansion of the highways, the grocery shop was demolished and thereafter, the appellant was jobless. Therefore, Kamatchi set up a road side tiffin shop and was managing the family with the income derived there from. The appellant got employment in a fast food shop and it is alleged that he was not giving any money for the family and was also not properly coming home. The couple used to quarrel frequently on these issues. On account of such a quarrel, Kamatchi doused herself with kerosene on 14.12.2009 around 05.45 am and committed self-immolation. On hearing her hollering, her sister Visalakshi and her husband rushed to Kamatchi's portion and found her afire. The appellant was also available at that time. Visalakshi took Kamatchi to a private hospital and from there, she was rushed to the Kilpauk Medical College Hospital, where she was examined by Dr.Mehajabeen (PW7) to whom Kamatchi stated that her sari caught fire while she was cooking. Dr. Mehajabeen (PW7) made entries in the Accident Register and admitted her as in-patient in the burns ward. A copy of the Accident Register was marked as Ex.P7. The police was intimated and accordingly, Velu (PW7), the Sub-Inspector of Police, came to the hospital and recorded the statement (Ex.P6) of Kamatchi based on which he registered a case in Crime No.730 of 2009 under Section 498-A IPC on 14.12.2009 at 12.30 hours and prepared the printed FIR (Ex.P7). He went to the place of occurrence and prepared Observation Mahazar (Ex.P1) and recovered a Kerosene Can (MO1) and Match box (MO2) under cover of mahazar (Ex.P2). He also prepared the Rough Sketch (Ex.P8). Kamatchi succumbed to the injuries on 16.12.2009 at 00.05 hours vide Death Report (Ex.P9). Pursuant to her death, the case was altered to one under Section 306 IPC vide alteration report (Ex.P10). Inquest was conducted over the body of the deceased by Velu (PW9) and the inquest report was marked as Ex.P11. Dr.Thiru Teekal (PW6) performed autopsy on the body of the deceased and in the post-mortem certificate (Ex.P4), he has opined that Kamatchi appeared to have died of shock due to extensive burns. After examining witnesses and collecting various reports, the police completed the investigation and filed final report in P.R.C.No.9 of 2011 before the Judicial Magistrate I, Poonamallee under Sections 498-A and 306 IPC against the appellant. On appearance of the appellant, 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.63 of 2012 and made over to the III Additional District and Sessions Judge, Tiruvallur for trial.

3. The trial Court framed charges under Sections 498-A and 306 IPC and when the appellant was questioned, he pleaded 'not guilty'. To prove the case, the prosecution examined 11

witnesses, marked Exs.P1 to P9 and MOs 1 and 2. When the appellant was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant nor any document marked.

4. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 25.06.2013 in S.C.No.63 of 2012, acquitted the appellant of the charges under Section 306 IPC, but convicted him of the offence under Section 498-A IPC and sentenced him to undergo 3 years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo one year simple imprisonment. Challenging the conviction and sentence, the appellant is before this Court.

5. Heard Mr.C.D.Sugumar, learned counsel for the appellant.

6.The prosecution has proved beyond cavil the following facts:

a) that the marriage of the appellant with the deceased took place on 20.08.1999;

b) that they were living in Door No.21A, Anna Street, Valasaravakam, Chennai-87; and

c) that the deceased committed self-immolation on 14.12.2009 at 05.45 am and died on 16.12.2009 at 00.05 hours, which is beyond 7 years of marriage.

7. The short question is, are there materials to sustain the conviction of the appellant of the offence under Section 498-A IPC. Since Kamatchi committed suicide 7 years after the marriage, the presumption under Section 113-A of Evidence Act will not apply. Now we are left with the dying declaration of Kamatchi and the evidence of Munusamy (PW1) and Visalakshi (PW2). In the dying declaration (Ex.P6), Kamatchi has stated as follows (free English translation):

"I am residing in the above address with my two children, Satheesh and Vidya aged 9 years and 6 years respectively; I got married in the year 1999 at Devi Marriage Hall, Valasaravakkam; Since marriage I am living with my family in my mother's house; my husband was running a grocery shop; now he does not do any business; in the night times he works in a fastfood shop in Iyappanthangal; He will not come home regularly; I am preparing Idlies at home and vending them in the street for livelihood; my sister Visalakshi is living with her family in another portion in the house; my mother died three years back; my husband was not giving his earnings properly for running the family; he would also not come home regularly and would come only once in a while; whenever he comes home, we used to have quarrel; today, on 14.12.2009, he came home at 04.00am

in the morning, we had a quarrel, thereafter he slept; I got up at 05.30am and was making preparations for my catering business; at that time, my husband got ready to leave the house; when I asked him as to why he is going out, he went inside and lay down on the bed. Since he was not listening to me, I got frustrated and at 05.45 am, I doused myself with kerosene and set fire; unable to bear the pain, I started shouting, hearing which my sister, my husband and neighbour Selvi doused the fire and took me to Sundaram Hospital from where I was taken to Kilpauk Medical College Hospital."

8. Mr.C.D.Sugumar, learned counsel submitted that when the deceased was examined by Dr.Mehajabeen at the time of admission, she has clearly told him that her sari caught fire while she was cooking and therefore, the entire prosecution case falls like a pack of cards.

9. This Court is unable to countenance this submission because the Investigating Officer found kerosene can and match box at the place of occurrence coupled with the fact that Visalakshmi (PW2) has clearly stated that Kamatchi committed self-immolation. Therefore, the dying declaration of Kamatchi that she committed self-immolation stood corroborated by other evidence and hence, the trial Court was right in not giving much credence to the statement of the deceased to Dr. Mehajabeen.

10. Ms.Kritika Kamal, learned Government Advocate submitted that PW1 and PW2 have stated that the appellant was having an extra-marital affair and that was the cause of the strife between the spouses. She further contended that the dying declaration also shows that the appellant was not taking proper care of the family and was not contributing financially at all.

11. As regards the above contention of the learned Government Advocate (Criminal Side) that the appellant was having an extra-marital affair, absolutely there is no evidence except the ipsi dixit of the two witnesses, namely PW1 and PW2, who have not stated this to the Investigating Officer when they were examined. That apart, they have not stated the name of the girl with whom he was allegedly having illicit intimacy. Had the appellant been having illicit intimacy, there is no reason for Kamatchi to burk it in her dying declaration. It is no one's case that the appellant had meted out physical violence on Kamatchi. After marriage, the appellant was running a grocery shop in Velappanchavadi, which was demolished by the Highways Department for road expansion. Thereafter, the appellant took up employment in a fast food shop that works in the night hours. That is perhaps the reason why he was not in a position to come

home every day night like a regular office goer. Even on the fateful day, he returned home only at 04.30 am. When he got ready to leave the house at 05.30 am, the deceased quarrelled with him and he meekly went inside and lay down on the bed. Therefore, this Court does not find sufficient material to sustain the conviction under Section 498-A IPC.

In this result, this Criminal Appeal is allowed, the judgment and order dated 25.06.2013 passed by the III Additional District and Sessions Judge, Thiruvallur in S.C.No.63 of 2012 is set aside and the appellant is acquitted of all charges. Fine, if any, paid shall be refunded to him.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

gpa
To

1. The III Additional District and Sessions Judge
Thiruvallur
2. Do Thro The Principal District cum Sessions Judge
Thiruvallur
3. The Judicial Magistrate No. I
Poonamallee
4. The Inspector of Police
Valasarawalkam Police Station
Chennai
5. The Chief Judicial Magistrate, Thiruvallur
6. The Public Prosecutor
Madras High Court, Chennai

Copy to
The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.C.D.Sugumar, Advocate sr 90355.

CRL.A.No.482 of 2013

KK(CO)
SP(04/12/2019)