

BAIL SLIP

The Appellant/Accused, namely N. Ravi S/o. Nagaiah released on bail as per order of this Court dated 30.08.2017 in CRL MP.NO.8764/2017 IN CRL A.NO.408/2017 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.07.2019

DELIVERED ON: 13.08.2019

CORAM:

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

Crl.A. No.408 of 2017

N. Ravi

Appellant

vs.

The State represented by
the Inspector of Police
V-4 Rajamangalam Police Station
Chennai

Respondent

Criminal Appeal filed under Section 374 Cr.P.C. seeking to set aside the judgment and order dated 15.07.2015 passed in S.C. No.244 of 2012 on the file of the Mahila Sessions Court, Chennai and allow the appeal thereby setting aside the conviction and sentence.

For appellant Mrs. S. Sridevi

For respondent Mr. G. Ramar

Government Advocate (Crl. Side)

JUDGMENT

This criminal appeal has been filed seeking to set aside the judgment and order of conviction and sentence dated 15.07.2015 passed in S.C. No.244 of 2012 on the file of the Mahila Sessions Court, Chennai.

2 The facts in a nutshell leading to the institution of this criminal appeal are as under:

2.1 The deceased in this case is one Janaki who is the appellant's wife. The prosecution case is that Janaki was married to the appellant and unable to withstand the cruelty meted out to her by the appellant, she committed suicide by hanging on 19.12.2010 at 3.30 p.m. in her matrimonial home.

2.2 On a written complaint (Ex.P.1) lodged by Angamma (P.W.1), Janaki's mother, the first respondent police registered a case in Cr. No.1313 of 2010 at 16.30 hrs. on 19.12.2010 under Section 174 Cr.P.C. and prepared the printed FIR (Ex.P.9). Shibu Kumar (not examined), Inspector of Police, took up the investigation of the case and requested Indra (P.W.5), Sub-Collector, to conduct inquest over the body of the deceased since the death was within 7 years of marriage. Indra (P.W.5) conducted inquest and submitted the inquest report dated 22.12.2010 (Ex.P.8), wherein, she has opined that the death of Janaki was not on account of dowry harassment. However, she has observed that the appellant being addicted to liquor, had pledged Janaki's jewels and also used to pick up quarrel with her frequently for money.

2.3 Dr. Harris Shanthaseelan (P.W.7) conducted postmortem on the body of the deceased and issued the postmortem certificate (Ex.P.10). In his evidence as well in the postmortem certificate (Ex.P.10), he has stated that Janaki would appear to have died of asphyxia due to hanging.

2.4 Hence, the police altered the case from one under Section 174 Cr.P.C. to one under Section 306 IPC and arrested the appellant. After examining witnesses and collecting various reports, Jayachandran (P.W.9), Inspector of Police filed the final report in P.R.C. No.122 of 2012 before the X Metropolitan Magistrate, Chennai.

2.5 On the 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.244 of 2012 and was made over to the Mahila Sessions Court, Chennai, for trial.

2.6 The Trial Court framed a charge under Section 306 IPC against the appellant and when questioned, the appellant pleaded not guilty.

2.7 To prove its case, the prosecution examined 9 witnesses and marked 16 documents and 1 material object.

2.8 When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On his side, no witness was examined nor was any document marked.

2.9 After considering the evidence on record and on hearing either side, the Trial Court convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
S.306 IPC	Ten years rigorous imprisonment and fine of Rs.10,000/- in default to undergo six months simple imprisonment

2.10 Challenging the aforesaid conviction and sentence, the accused is before this Court.

3 Heard Mrs. S. Sridevi, learned counsel for the appellant and Mr. G. Ramar, learned Government Advocate (Crl. Side) appearing for the respondent State.

4 The learned counsel for the appellant contended that there is no material to show that the appellant was Janaki's husband. She elaborated this argument by contending that Janaki was already married to one Govindarajan and the appellant was already married to one Mahalakshmi and thus, the appellant was not Janaki's husband. She further contended that in the complaint (Ex.P.1), Angamma (P.W.1) has not levelled any allegation against the appellant.

5 Angamma (P.W.1) and Raju (P.W.2), mother and father respectively of Janaki, have stated that their daughter Janaki was married to Govindarajan in 2005 and within 3 years of their marriage, they got separated and their marriage was dissolved; thereafter, Janaki and the appellant who was their neighbour, fell in love with each other, eloped and got married; after marriage, they lived in Door No.145, III Cross Street, Sivasakthi Nagar, Kolathur, Chennai with two children; the appellant would go for painting work and would come home inebriated and quarrel with Janaki for money; Janaki was given three sovereigns of gold and a pair of silver anklets during marriage; the appellant pledged them in a Marwari pawn broker shop and drank.

6 Angamma (P.W.1) has further deposed that the appellant had borrowed Rs.5,000/- from one Periyasamy, their neighbour and spent that money also on drinking; on 19.12.2010, she (Angamma - P.W.1) cooked food and left for work and at that time, the appellant was drunk; around 3 p.m., her neighbour called her and told her that Janaki had died; she (Angamma - P.W.1) rushed to her house and found that

Janaki had been taken to the hospital; a week ago, the appellant had quarelled with her (Janaki) to give him Rs.6,000/- that was given as dole by the Government for the birth of the child.

7 The chief-examination was conducted on 06.12.2012 and at that time, the counsel for the appellant (accused) had reported "no cross". Angamma (P.W.1) was recalled under Section 311 Cr.P.C. and was cross-examined one year later, i.e., on 05.12.2013. Not satisfied with the cross-examination, once again, a petition under Section 311 Cr.P.C. was filed and further cross-examined on 09.06.2014. Likewise, all the witnesses in this case were not cross-examined on the day they were examined in chief. They were all cross-examined one year after their examination-in-chief, which practice has been deprecated by the Supreme Court in Vinod Kumar vs. State of Punjab¹.

8 The most incriminating piece of evidence against the appellant is his statement to Indra (P.W.5) during inquest, which has been marked as Ex.P.8. This statement is not hit by Section 25 or 162 Cr.P.C. and is relevant as admission under Section 21 of the Evidence Act and can be used against the maker. In that statement, the appellant has categorically admitted that Janaki was his wife. He has further stated that on 19.12.2010, she gave him money for purchasing meat and after he got it for her, she told him that she would cook meat and keep it ready and sent him for having a drink with an advice to drink moderately; on his return, he found the door open and saw Janaki hanging. Thus, from his own admission, it is apparent that he had consumed liquor on 19.12.2010.

9 At this juncture, it is relevant to discuss the evidence of Sasikala (P.W.3) who has stated that she lives in Door No.139 and is a neighbour of the appellant; she knows the appellant, his wife Janaki and their two children; the appellant was a painter; the appellant would come home drunk and frequently quarrel with Janaki; on Sunday, around 12 noon, she saw the appellant and Janaki quarelling; after that, she went into her house for doing her household chores; around 2.30 p.m., she heard a commotion and saw the appellant running with his child saying that his wife Janaki has committed suicide by hanging; soon, a crowd gathered in the appellant's house and the body was taken to the hospital. Though this witness was examined-in-chief on 18.12.2012, she was not cross-examined on that day and was recalled on 05.12.2013 and was cross-examined.

10 In the cross-examination, Sasikala (P.W.3) has clearly stated that while she was in her house, she heard some quarrel outside and when she came out, she saw the appellant quarrelling with his wife. The defence was not able to make any dent in her evidence.

11 At this juncture, it may be relevant to recollect that Angamma (P.W.1) has also stated that on the fateful day, the appellant was drunk. In order to prove that the appellant was the husband of Janaki, the prosecution has marked the birth certificate of Janaki's two children as Exs.P.15 and P.16 which clearly show that the appellant and Janaki are the parents of the two children, viz., Sathyamoorthy and Navinesh.

12 In the light of such overwhelming evidence coupled with the admission of the appellant himself in Ex.P.8 that Janaki is his wife, it is too late in the day to contend that the appellant is not Janaki's husband. The evidence of Sasikala (P.W.3) clearly shows that even on the fateful day, the appellant had quarellled with Janaki in public. The statement of the appellant that Janaki sent him to have a drink with a caveat to drink moderately defies credulity.

13 Thus, in the facts and circumstances of the case at hand, the presumption under Section 113-A of the Evidence Act requires to be invoked. Unfortunately, no material worth its salt has been placed by the appellant to dislodge the said statutory presumption. Accordingly, the conviction of the appellant is confirmed.

14 Coming to the sentence, it is seen that Janaki has left behind two children to be taken care of. Bearing in mind the overall facts and circumstances of the case, this Court is of the view that the interests of justice will be served if the sentence is reduced to five years rigorous imprisonment and it is ordered accordingly.

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

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

cad

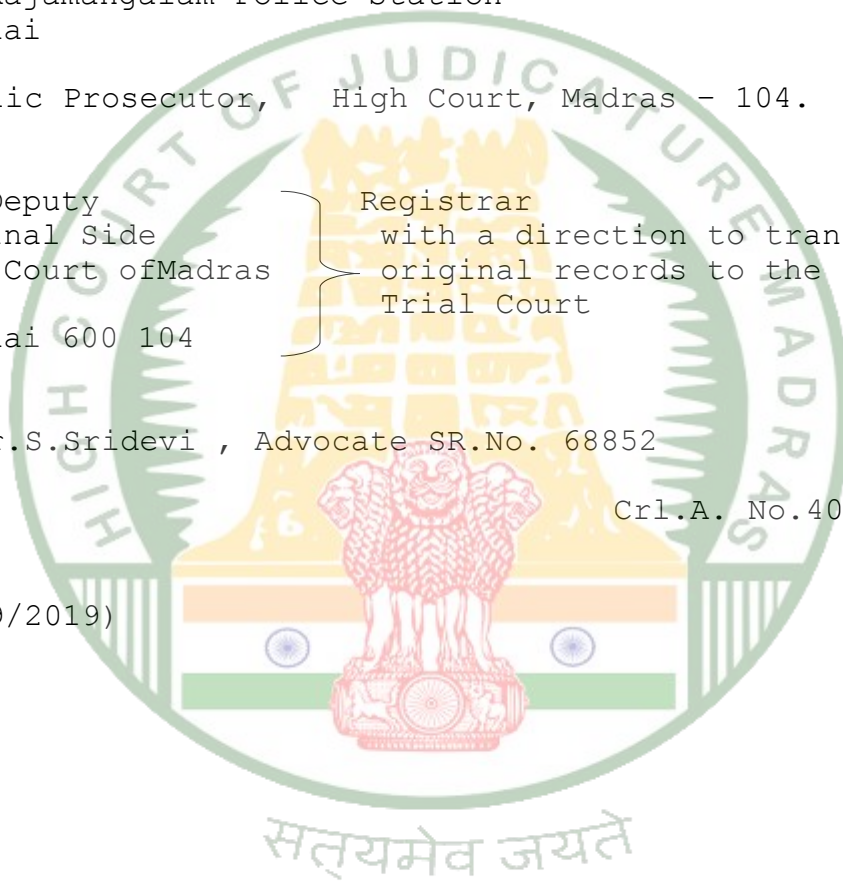
To

- 1 The Mahila Sessions Judge, Mahalir Neethi Mandram
Chennai
 - 2 The Principal session Judge, Chennai (For information)
 3. The Superintendent, Central Prison, Puzhal
 4. The Deputy collector, Collectorate, Chennai
 5. The Inspector of Police
V-4 Rajamangalam Police Station
Chennai
 6. The Public Prosecutor, High Court, Madras - 104.
 - 7 The Deputy Criminal Side High Court of Madras
Chennai 600 104
- Registrar
with a direction to transmit the
original records to the
Trial Court

+1cc to Mr. S. Sridevi, Advocate SR.No. 68852

Crl.A. No.408 of 2017

spd (CO)
A.SK (09/09/2019)



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