

Bail Slip

The Petitioner/Accused viz., Jayakumar, S/o.Palani, was released on bail as per order of this Court, dated 05/03/2013 in CrI.M.P.No.1 of 2013 in CrI.A.No.792 of 2012 on the file of this Court and subsequently cancelled as per order of this Court dated 10/01/2020 made in CrI.A.No.792 of 2012, on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.A.No.792 of 2012

Jayakumar
S/o.Palani

...Appellant/Accused

Vs.

State, represented by
Assistant Commissioner of Police,
Ayanavaram Range,
Chennai.

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 17.09.2012, passed by the Mahila Court, Chennai, in S.C.No.124 of 2010.

For Appellant : Mr.K.S.Kaviarasu
(Amicus Curiae)

For Respondent : Mrs. Kritika Kamal. P.
Government Advocate (CrI. Side)

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence, dated 17.09.2012, passed by the Sessions Judge, Mahila Court, Chennai, in S.C.No.124 of 2010.

2.The prosecution case is as under :

2.1.The deceased Selvi was the daughter of Muniammal (P.W.1), and sister of Janaki (P.W.2).

2.2.The appellant married Selvi on 17.06.2007 and the couple lived in the house of the appellant's sister for sometime.

2.3.It is alleged that the appellant was addicted to liquor and after consuming it, he would quarrel with his wife and beat her. Unable to withstand the beatings, Selvi lodged a complaint on 25.01.2008 at All Women Police Station, Ayanavaram, based on which, Gunavathi (P.W.15), Sub-Inspector of Police, registered her (Selvi's) complaint as a petition in C.S.R.No.15/CSR/W6AWPS/08 (Ex.P1) and conducted enquiry by calling both of them. She (P.W.15) recorded the statement of Selvi and the appellant and after admonishing the appellant, she sent them away, advising them to live peacefully.

2.4.In the meantime, the couple shifted to Door No.41, Chetty Street, Ayanavaram, Chennai. Muniammal (P.W.1) was residing at Door No.46, Muthumari Amman Koil Street, Ayanavaram, Chennai, which is a walkable distance from the house where the appellant and Selvi were living.

2.5.Around 07.00 p.m. on 11.04.2009, the appellant came drunk, picked up quarrel with Selvi and assaulted her. They were quarreling so loudly that their neighbours, Raja (P.W.3), Babu (P.W.5), and Tamilselvan (P.W.7) intervened. The appellant beat his wife and hence, Raja (P.W.3) went to Muniammal's (P.W.1's) house to fetch her. Muniammal (P.W.1) and her daughter Janaki (P.W.2) rushed to the house of the appellant to enquire, but they found the door locked from inside and Selvi shrieking. They staved in through the main door and found Selvi lying on the floor, burnt. They rushed her to the Kilpauk Medical College Hospital, where, Dr.Rajasekaran (P.W.13) examined her at 03.10 p.m. on 12.04.2009 and declared "brought dead". The body was kept in the mortuary.

2.6.On the written complaint (Ex.P2) given by Muniammal (P.W.1), Muthukumar (P.W.16), Sub-Inspector of Police, registered a case in Crime No.284 of 2009 under Section 174 Cr.P.C. and prepared the printed F.I.R. (Ex.P12).

3.Edward (P.W.17), Inspector of Police, went to the place of occurrence and prepared Observation Mahazar (Ex.P15) and Rough Sketch (Ex.P16) in the presence of witnesses, Vivekanandan (P.W.6) and Srinivasan (not examined). From the place of occurrence, the police seized the following items under the cover of Mahazar (Ex.P17).

- i. Broken glass pieces (M.O.1)
- ii. Fully burnt matting (M.O.2)
- iii. Half burnt matchsticks (M.O.3)
- iv. Light yellow colour petticoat in burnt condition (M.O.4)
- v. Black-white colour checked half-sleeve shirt in burnt condition (M.O.5)
- vi. Yellow colour embroidery saree in burnt condition (M.O.6)
- vii. Light yellow colour jacket in burnt condition (M.O.7)
- viii. Burnt and molten plastic kerosene bottle's cap (M.O.8)

- ix.Umbrella in burnt condition (M.O.9)
- x.Eversilver vessels plastic cover in burnt condition (M.O.10)
- xi.Whitish yellow colour bra in burnt condition (M.O.11)
- xii.Fully burnt blanket (M.O.12)
- xiii.Fully burnt waist band (M.O.13)
- xiv.Burnt mangalsutra

4.Since the death of Selvi was within seven years of marriage, Mr.Pandurangan (P.W.12), Executive Magistrate, conducted inquest over the body of Selvi. During inquest, he examined and recorded the statements of Muniammal (P.W.1), and the appellant, in the presence of panchayatars. The inquest proceedings was marked as Ex.P8 and the inquest report containing the statements of Muniammal (P.W.1) and the appellant were marked as Ex.P9. Mr.Pandurangan (P.W.12), in his evidence as well in the inquest proceedings and report (Exs.P8 and P9), has stated that the death of Selvi was not on account of dowry harassment, but on account of cruelty inflicted by the appellant on her.

5.Therefore, the police altered the case from one under Section 174 Cr.P.C. to one under Sections 498-A and 306 IPC, vide alteration report (Ex.P21). The appellant was arrested on 18.04.2009 and a shirt that was worn by him, which had burn marks, was recovered under Seizure Mahazar (Ex.P6). Seized articles were sent through Court to the Tamil Nadu Forensic Sciences Laboratory for examination.

6.Dr.Subramanian (P.W.14), who conducted autopsy on the body of Selvi, has noted the following injuries on her body. "100% deep dermal burns involving whole body. Burns are antemortem in nature. Injuries : 3 Bruises present in the right side of forehead (i) 3x2 cm ii) 2x1 cm iii)1x1 cm. On dissection of head, there was i) subscalpal contusion in the occipital region Right side 5x3 cm seen ii) another contusion of size 4x2 cm seen in Right frontal region."

He has further opined that the deceased would appear to have died of shock due to extensive burns (100% burns) with nonfatal injuries.

7.Investigation of the case was taken over by Mohan Raj (P.W.18), Assistant Commissioner of Police, who examined witnesses, collected various reports and filed a final report in P.R.C.No.12 of 2010 before the 5th Metropolitan Magistrate, Egmore, Chennai, for the offences under Sections 498-A and 306 IPC, against the appellant.

8.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.124 of 2010 and was made over to the Mahila Court, Chennai, for trial.

9.The trial Court framed charges for the offences under Sections 498-A and 306 IPC against the appellant. When questioned, the appellant pleaded 'not guilty'.

10.To prove the case, the prosecution examined 18 witnesses, marked 21 Exhibits and 13 Material Objects.

11.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 as to the circumstances, under which, his wife committed suicide. No witness was examined nor any document marked from the side of the appellant.

12.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 17.09.2012, in S.C.No.124 of 2010, convicted and sentenced the appellant as follows :

Provision under which convicted	Sentence
Section 498-A IPC	Three years rigorous imprisonment and also fine of Rs.5,000/-, in default to undergo simple imprisonment for three months
Section 306 IPC	Ten years rigorous imprisonment and also fine of Rs.10,000/-, in default to undergo simple imprisonment for six months

13.Challenging the aforesaid conviction and sentence, the appellant filed the present appeal through Mr.Nambirajan and Mr.A.C.Vasanthakumar, Advocates.

14.This Court suspended the sentence and released the appellant on bail, vide order dated 05.03.2013, made in CrI.M.P.No.1 of 2013 in CrI.A.No.792 of 2012.

15.When the matter was listed for final hearing on 10.01.2020, this Court passed the following order :

"When the matter was taken up for hearing on 08.01.2020, there was no representation for the

appellant. Hence, this Court directed the Registry to post the matter today, i.e. on 10.01.2020, under the caption "For dismissal".

2.Today, Mr.S.Nambirajan, learned counsel for the appellant, appeared and submitted that he does not know the whereabouts of the appellant and that the appellant is not in touch with him for the last eight years. Hence, he withdrew his appearance and made an endorsement to that effect.

3.In view of the endorsement, the suspension of sentence and bail, that was granted to the appellant in Crl.M.P.No.1 of 2013 in Crl.A.No.792 of 2012, is hereby cancelled and the police is directed to secure the appellant and produce him before the Sessions Judge, Mahila Court, Chennai, for taking him into custody.

4.This Court appoints Mr.K.S.Kaviarasu (Enrollment No.2046/2008), No.145/301, Thomas Street, Chennai - 600 001, an Advocate of more than 10 years standing, to appear for the appellant. A copy of the typed set of papers is furnished to Mr.K.S.Kaviarasu.

Registry is directed to print the name of Mr.K.S.Kaviarasu, Advocate, for the appellant and post the matter for final disposal on 22.01.2020."

16.Heard Mr.K.S.Kaviarasu, Amicus Curiae, appearing for the appellant and Mrs.P.Kritika Kamal, Government Advocate (Crl. Side), appearing for the respondent.

17.Mr.K.S.Kaviarasu submitted that there is absolutely no evidence to sustain the conviction and the prosecution has failed to prove that the appellant had abetted the suicide of Selvi. In support of this contention, he placed reliance on judgment of the Hon'ble Supreme Court in Ramesh Kumar v. State of Chhattisgarh [(2001) 9 SCC 618].

18.Per contra, learned Government Advocate (Crl. Side) refuted the contentions.

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

20.The prosecution has proved beyond cavil, the following facts :

- i. The appellant is the husband of Selvi and they got married in the year 2007.

- ii. The appellant and Selvi were residing at Door No.41, Chetty Street, Ayanavaram, Chennai.
- iii. Selvi's mother Muniammal (P.W.1), and sister Janaki (P.W.2) were residing at Door No.46, Muthumari Amman Koil Street, in the same area, i.e., Ayanavaram, Chennai.
- iv. Selvi died of burn injuries on 11.04.2009 in her matrimonial home.

21. It is not the case of the prosecution that the appellant had murdered Selvi, but Selvi committed suicide by self immolation on account of the cruelty inflicted by the appellant on her.

22. Muniammal (P.W.1), and Janaki (P.W.2), in their evidence, have stated that, Selvi was given in marriage to the appellant and after marriage, she (Selvi) lived in joint family in the house of the appellant's sister; the appellant would come drunk everyday and would beat Selvi, saying that she was not begetting him a child; unable to withstand the torture, Selvi gave a police complaint on 25.01.2008 (Ex.P1); on this complaint, the Sub-Inspector of Police, All Women Police Station, called all the parties to the Police Station, conducted enquiry, and obtained an undertaking from the appellant that he will not harass his wife anymore; Selvi and the appellant moved to Door No.41, Chetty Street, Ayanavaram, Chennai; even after that, the problem did not stop; the appellant started suspecting the fidelity of Selvi and was assaulting her after consuming liquor; since Selvi was living very near to their house, Selvi told them of her sufferings; in the afternoon of 11.04.2009, Selvi came home and had lunch; at that time also, she complained that the appellant comes home drunk and beats her; they pacified her and asked her to go home; on the same day night, Raja (P.W.3), a neighbour to the appellant, came to their house and told them that the appellant was quarreling with Selvi and asked them to come; when they went to Selvi's house, they found the door locked from inside and smoke was blowing out; so, they broke open the door, and to their shock, found Selvi lying on the floor with burns.

23. In the cross-examination of Muniammal (P.W.1), the defence was not able to make any dent, except suggesting that the accused was not responsible for the death of Selvi, which suggestion, the witness denied. When the witness was asked as to whether she had direct knowledge of the incident, she stated that she came to know about the incident only through Raja (P.W.3). Mr.K.S.Kaviarasu placed reliance on this averment and submitted that, Muniammal (P.W.1) was not aware of the alleged cruelty inflicted on Selvi. This Court is unable to agree with

this submission, because, the witness has stated that she does not have direct knowledge as to how Selvi suffered burns and this cannot be interpreted to mean that she did not know about the cruelty meted out to Selvi by the appellant.

24.Raja (P.W.3), who was living in Door No.41/52, Chetty Street, Ayanavaram, Chennai, in his evidence, has stated that he knows the appellant and Selvi, as they were his neighbours; there were frequent quarrels between the appellant and his wife, as they were childless; hence, the appellant would come drunk and beat Selvi; on 11.04.2009, around 09.30 p.m., while he was returning home, he found the appellant drunk; around 10.15 p.m., there was lot of noise near the appellant's house and so, he went there and found the appellant abusing Selvi and beating her; so, he went to fetch Selvi's mother Muniammal (P.W.1); he told Muniammal (P.W.1) about the quarrel and brought her; when they came, they found that Selvi had died of burns. In the cross-examination, Raja (P.W.3) has clearly stated that he was living in the same compound opposite to the house of the appellant.

25.The evidence of P.Ws.1 to 3 have also been corroborated by two other neighbours, viz., Tamilselvan (P.W.7) and Shakila (P.W.9).

26.Dr.Subramanian (P.W.14), who conducted autopsy on the body of Selvi, has stated that the three external injuries that were found on the body of Selvi would not have occurred due to burns. He has not been cross-examined on this aspect. The chemical examination report (Ex.P20) shows that kerosene was detected in all the items that were seized at the place of occurrence, except in broken glass pieces (M.O.1) and eversilver vessels plastic cover (M.O.10). In other words, kerosene was also detected in the shirt that was worn by the appellant at the time of occurrence. The appellant, in his statement (Ex.P8) to the Executive Magistrate, has admitted his presence in the house, when Selvi doused herself with kerosene, and has stated that he ran away from there. The statement made to the Executive Magistrate is not hit by Section 162 Cr.P.C. Thus, his admission that he was present in the place of occurrence and that he ran away from there is relevant under Section 21 of the Evidence Act. His conduct of not attempting to save his wife is relevant under Section 8 of the Evidence Act.

27.In Ramesh Kumar (supra), relied upon by Mr.K.S.Kaviarasu, the deceased in that case has given a dying declaration, wherein, she has stated that she had a quarrel with her husband and so, she poured kerosene on herself and set fire.

In that context, the Supreme Court held that the accused therein cannot be convicted for abetment of suicide. In this case, there are sufficient materials to show that the appellant was beating Selvi after consuming liquor.

28. Within a short time after marriage, Selvi had to rush to the Police Station to give a complaint, on 25.01.2008. The police called them for enquiry, counselled the appellant and brought about a truce. Thereafter also, the appellant did not mend his ways and continued to harass Selvi. Even on the fateful day, i.e. on 11.04.2009, the appellant came home drunk, quarreled with Selvi, abused and assaulted her. There is no good reason for this Court, not to invoke the presumption under Section 113-A of the Evidence Act, because the circumstances of the case show that, from the inception, the appellant has been subjecting Selvi to cruelty and even on the fateful day, she was beaten by him. The reason for harassing her is that she did not beget him a child and that he was suspecting her fidelity. Thus, the evidence on record is good enough to sustain the conviction of the appellant of the offences under Sections 498-A and 306 IPC. However, this Court is of the view that the interests of justice will be served, if the sentence of imprisonment for the offence under Section 306 IPC is reduced from ten years rigorous imprisonment to five years rigorous imprisonment.

29. In view of the above discussion, the conviction and sentence qua the offence under Section 498-A IPC are confirmed. The conviction of the appellant of the offence under Section 306 IPC is confirmed, but the sentence is reduced to five years rigorous imprisonment. Fine and default sentence shall remain the same. The sentences shall run concurrently.

30. As a result, this Criminal Appeal is partly allowed. The trial Court is directed to secure the appellant and commit him to prison to undergo the remaining sentence.

This Court places on record, its appreciation of Mr.K.S.Kaviarasu. The Tamil Nadu Legal Services Authority is directed to pay Rs.10,000/- to Mr.K.S.Kaviarasu, as remuneration.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

- 1.The Sessions Judge,
Mahila Court,
Chennai.
 - 2.The Assistant Commissioner of Police,
Ayanavaram Range,
Chennai.
 - 3.The Public Prosecutor,
High Court, Madras.
 - 4.The Tamil Nadu Legal Services Authority,
Chennai.
 - 5.The Deputy Registrar |
(Criminal Section), |
High Court, Madras.
(with a direction to send back
the original records, forthwith,
to the trial Court)
 - 6.The V Metropolitan Magistrate,
Egmore, Chennai.
 - 7.The Chief Metropolitan Magistrate,
Egmore.
 - 8.The Superintendent,
Central Prison, Puzhal, Chennai.
- +1 cc to M/s.K.S.Kaviarasu, Advocate Sr.No. 4812
- AKM/28.02.2020/9P- 10C /

सत्यमेव जयते

Cr1.A.No.792 of 2012

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