

Bail Slip

The Petitioners/Accused Viz., 1.Kannan S/o. Kaliyamoorthy, 2.Kaliyamoorthy, S/o.Muniyan, 3.Ilangiyam W/o. Kaliyamoorthy, were directed to be released on bail as per the order of this court dated 5.3.2013 and made in CrI.Mp.No.1/2012 in CrI.A.845/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.A.No.845 of 2012

1. Kannan

2. Kaliyamoorthy

3. Ilangiyam

...

Appellants/Accused

Vs.

State represented by
The Inspector of Police,
Meensuruty Police Station.

...

Respondent/Complainant

Criminal Appeal filed under Section 378 Cr.P.C. against the judgment and order dated 17.09.2012 passed in S.C.No.29 of 2012 on the file of the Additional District and Sessions Court, Ariyalur.

For Appellant : Mr.Ramprakash Rajagopal

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

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 17.09.2012 passed in S.C.No.29 of 2012 on the file of the Additional District and Sessions Court, Ariyalur.

2. The concentrated facts of the case distilled from the evidence on record flow as under:

2.1 The deceased Ezhilarasi is the daughter of Ganesan (PW1) and Pushpavalli (PW2). Their family hails from Kothandavalagam village in Kattumanarkoil Taluk.

2.2 Kannan (A1) is the nephew of Ganesan (PW1), in the sense that, he (A1) is Ganesan's (PW1's) elder sister Ilangiyam's (A3's) son.

2.3 Kannan (A1) got married to Ezhilarasi on 28.11.2007 and after marriage, the couple lived in joint family with Kaliyamoorthy (A2 - father of Kannan-A1) and Ilangiyam (A3) in Iyyapanayakanpettai village, Ariyalur District. The couple was blessed with two children.

2.4 While so, on 18.02.2010, around 22.30 hours, Ezhilarasi doused herself with kerosene and committed self-immolation in her matrimonial home. Kannan (A1) rushed her to the Government Hospital, Cuddalore, where, she was admitted at 5.20 a.m. on 19.02.2010 for treatment. She was found with 70-80% burns vide accident register copy (Ex-P6).

2.5 On intimation by Dr.N.Sundaram, learned Judicial Magistrate No.III, Cuddalore, came to the hospital and recorded the statement (Ex-P7) of Ezhilarasi at 6.30 p.m. on 19.02.2010. Thereafter, Ezhilarasi was shifted to the Government Hospital, Puducherry, for better treatment. While she was under treatment there, T.Pugalendhi (PW11), Sub-Inspector of Police, recorded her statement (Ex-P9) and obtained her left thumb impression. Based on her statement (Ex-P9), he (PW11) registered a case in Crime No.67 of 2010 on 20.02.2010 at 9.00 hours for the offences under Sections 294-B, 323, 498-A and 506 (I) IPC, against Kannan (A1), Kaliyamoorthy (A2) and Ilangiyam (A3).

2.6 The FIR reached the jurisdictional Magistrate only on 22.02.2010 at 10.30 a.m. In the mean time, Ezhilarasi died on 21.02.2010 at 8.00 p.m. Therefore, the case was altered by adding Section 306 IPC with the existing penal provisions vide alteration report (Ex-P13). Since the death of Ezhilarasi was within seven years of marriage, G.Satchithanandhan (PW7), Executive Magistrate, conducted inquest over the body of Ezhilarasi on 23.02.2010 and the inquest report was marked as Ex-P8.

2.7 Satchithanandhan (PW7), in his evidence as well in the inquest report (Ex-P8), has opined that the death of Ezhilarasi was not on account of dowry demand, but, on account of cruelty by her husband (A1) and parents-in-law (A2

& A3). The post-mortem report (Ex-P14) states that Ezhilarasi died of septicaemia due to burns.

2.8 The investigation of the case was conducted by Deivam (PW15), Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex-P4) and rough sketch (Ex-P11) and effected seizure of a plastic can (M.O.1) and a burnt cloth (M.O.2) under mahazar (Ex-P5) in the presence of witnesses Elangovan (PW4) and Ponnarasan (PW5).

2.9 After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.21 of 2011 before the Judicial Magistrate Court, Jayankondan, for the offences under Sections 498-A and 306 IPC, against Kannan (A1) and his parents Kaliyamoorthy (A2) and Ilangiyam (A3).

2.10 On appearance of the appellants, 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.29 of 2012 and was made over to the Additional District and Sessions Court, Ariyalur, for trial.

2.11 The trial Court framed charges for the offences under Sections 306 and 498-A IPC against the appellants and when questioned, they pleaded "not guilty".

2.12 To prove the case, the prosecution examined fifteen witnesses and marked fifteen exhibits and two material objects.

2.13 When the appellants were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. On behalf of the appellants, no witness was examined nor any document marked.

2.14 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.29 of 2012, convicted and sentenced the appellants as follows:

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Accused	Provision under which convicted	Sentence
Kannan (A1)	Section 306 IPC	Seven years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo one year rigorous imprisonment.
Kaliyamoorthy (A2)	Section 498-A IPC	Three years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo three months rigorous imprisonment.
Ilangiyam (A3)		

The aforesaid sentences were ordered to run concurrently.

2.15 Challenging the above conviction and sentences, the accused have preferred the present criminal appeal.

3. Heard Mr.Ramprakash Rajagopal, learned counsel for the appellants and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. The prosecution has proved the following facts beyond a peradventure:

(a) inter se relationship between the parties;

(b) the marriage of Ezhilarasi with Kannan (A1) on 28.12.2007;

(c) the couple was living in joint family with Kaliyamoorthy (A2) and Ilangiyam (A3) in Iyyapanayakanpettai village;

(d) the couple was blessed with two children; and

(e) Ezhilarasi committed self-immolation in her matrimonial home on 18.02.2010 at 9.00 p.m. and she succumbed to her injuries on 21.02.2010 at 8.00 p.m.

5. The short question is whether the appellants had abetted her suicide.

6.It is the specific case of the prosecution that Kannan (A1) suspected the fidelity of Ezhilarasi and tormented her including beating her. On the fateful day also i.e., on 18.02.2010, a quarrel had ensued, in which, it is alleged that Kaliyamoorthy (A2) and Ilangiyam (A3) extorted Kannan to beat her and therefore, unable to withstand the torture, she committed self-immolation.

7. In this case, the parents of Ezhilarasi viz., Ganesan (PW1) and Pushpavalli (PW2), supported the prosecution story while they were examined by the Executive Magistrate (PW7) in the inquest, but, turned hostile during trial and did not support the prosecution case. Therefore, this Court is left with the two dying declarations of Ezhilarasi, viz., one (Ex-P7) given to the Judicial Magistrate No.III (PW6) and the other (Ex-P9) recorded by the police. As alluded to above, the dying declaration (Ex-P7) recorded by the Judicial Magistrate No.III (PW6) is in a question-and-answer form in Tamil, the free English translation of which is as follows:

"Q: How did you suffer burn injury?

A: I doused myself with kerosene and committed self-immolation.

Q: Why did you do so?

A: I did this because there was a quarrel in the house.

Q: What quarrel?

A: My husband assaulted me.

Q: Why did he assault you?

A: Because he suspected me.

Q: When did the quarrel happen?

A: Quarrel happened between 9.00 and 10.00 p.m. After he slept, around 11.30 p.m., I took kerosene, poured it on myself. My husband was sleeping.

Q: Who took you to the hospital?

A: My husband brought me to the hospital and informed my mother over phone.

Q: Do you want say anything more?

A: Only at the instance of my mother-in-law, my husband beat me. I lived with my husband for only six months. My father-in-law, mother-in-law and my husband tortured me. Because of their torture, I committed self-immolation."

8. At the time when the above dying declaration was recorded by the Judicial Magistrate No.III (PW6), Ezhilarasi had suffered 70-80% burns and she was in Government Hospital, Cuddalore. The second dying declaration (Ex-P9) was recorded by Pugazhendhi (PW11), Sub-Inspector of Police, after she was shifted to the Government Hospital, Puducherry. This dying declaration runs to two sides of a foolscap paper handwritten in Tamil. A reading of this dying declaration (Ex-P9) is very graphic and attributes specific overt acts to each of the appellants.

9. The learned counsel for the appellants submitted that there is no certification by the doctor in the statement (Ex-P9) recorded by the police that the patient was in a fit state of mind while giving the statement, whereas, such certification is available in the dying declaration (Ex-P7)

that was recorded by the Judicial Magistrate No.III (PW6). The issue with regard to the necessity for obtaining such a certification is no more res integra in view of the authoritative pronouncement of the Supreme Court in Laxman Vs. State of Maharashtra¹.

10. If such a certification is available, it would enhance the value of the dying declaration, but, the non-availability of such a certification will not decrease its probative value by itself.

11. A reading of the dying declaration (Ex-P9) recorded by the police shows Ezhilarasi herself saying that, "I was shifted for further treatment to Puducherry Government Hospital. You came on 19.10.2010 around 200 hours and recorded my statement. My parents and my relatives had come when I was being shifted by 108 ambulance and I told them what had happened". It is strange, as to how, a rustic girl would use railway timings in her statement (Ex-P9) to the police. The evidence on record shows that Ezhilarasi had studied up to VII standard in a village school. In the footnote of the statement (Ex-P9), Pugazhendhi (PW11), Sub-Inspector of Police had made the following endorsement: "Sir, after getting the statement, I registered a case in Crime No.67 of 2010 for the offences under Sections 294-B, 323, 498-A and 506(II) IPC on 20.02.2010 at 9.00 hours". The date 19.02.2010 has been corrected as 20.02.2010.

12. In the chief-examination, Pugazhendhi (PW11) has stated that while he was on duty as Sub-Inspector of Police in Meensuruti Police Station, he received information on 19.02.2010, went to Government Hospital, Cuddalore, learnt that the patient Ezhilarasi has been shifted to Government Hospital, Puducherry, went to Government Hospital, Puducherry and recorded her statement (Ex-P9).

13. In the cross-examination, Pugazhendhi (PW11) was shown with a portion of Ezhilarasi's statement (Ex-P9) that, it was recorded on 19.02.2010 at 200 hours, for which, he (PW11) stated that it was recorded on 19.02.2010 at 2.00 a.m. This is not true, because, Ezhilarasi was admitted to the Government Hospital, Cuddalore, only at 5.20 a.m. on 19.02.2010 and was shifted to the Government Hospital, Puducherry, only after her statement was recorded by the Judicial Magistrate No.III (PW6). Therefore, Ezhilarasi was not in Government Hospital, Puducherry, at 2.00 a.m. on 19.02.2010. He (PW11) also admitted that he corrected the date as 20.02.2010 in the footnote of the statement (Ex-P9).

14. The statement (Ex-P9), along with FIR (Ex-P10), has reached the Judicial Magistrate only on 22.02.2010 at

¹ (2002) 6 SCC 710

10.30 a.m. after the death of Ezhilarasi on 21.02.2010. Ezhilarasi has affixed only her left thumb impression in the statement (Ex-P9). When the Judicial Magistrate No.III (PW6) recorded her statement, she was having 70-80% burns. Since her condition was deteriorating, she was shifted from Government Hospital, Cuddalore, to Government Hospital, Puducherry.

15. If all these facts are cumulatively viewed in the backdrop of the absence of certification by a doctor in the dying declaration (Ex-P9), which runs to two sides of a foolscap paper attributing overt acts to each of the appellants, its veracity does rise a very serious doubt in the mind of this Court to mulct criminal liability on all the appellants.

16. The learned Government Advocate (Crl.Side) submitted that Kannan (A1), in his statement (Ex-P8) to the Executive Magistrate (PW7), has admitted that he had assaulted Ezhilarasi on the fateful day.

17. It is true that Kannan (A1) has stated that he had assaulted Ezhilarasi on 18.02.2010. However, this admission of his cannot be seen in isolation. He has stated that he came home for dinner, but, Ezhilarasi did not serve dinner and quarrelled with him; so, he went and had dinner in his mother's (A3's) house and she was watching all this; when he came home, Ezhilarasi once again quarrelled with him and so, he assaulted her. Therefore, Kannan's (A1's) admission that he assaulted her cannot be dissected from the rest of the statement to hold that he had abetted her suicide.

18. From the conspectus of the facts obtaining in this case, this Court is of the view that the evidence on record falls short of the requirements to sustain the conviction of the appellants under Section 306 IPC albeit the presumption under Section 113-A of the Evidence Act. However, the dying declaration (Ex-P7) recorded by the Judicial Magistrate No.III shows that Kannan (A1) has been suspecting her fidelity and assaulting her, which, in the opinion of this Court, is sufficient enough to sustain the conviction under Section 498-A IPC.

19. In view of the aforesaid discussion:

(i) Kaliyamoorthy (A2) and Ilangiyam (A3) are acquitted of all the charges.

(ii) The fine amount paid by Kaliyamoorthy (A2) and Ilangiyam (A3) for the offences under Sections 306 and 498-A IPC shall be refunded. Bail bonds executed by them shall stand discharged.

(iii) Kannan (A1) is acquitted of the offence under

Section 306 IPC.

(iv) The conviction of Kannan (A1) of the offence under Section 498-A IPC is confirmed, but, the substantive sentence of three years rigorous imprisonment is reduced to one year rigorous imprisonment.

(v) The sentence of fine and the default sentence for the offence under Section 498-A IPC qua Kannan (A1) stand confirmed.

(vi) The fine amount paid by Kannan (A1) for the offence under Section 306 IPC shall be refunded.

Resultantly, this criminal appeal stands allowed in part to the extent indicated above.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

nsd
To

1. The Additional District
and Sessions Judge,
Ariyalur.
- 2.The Chief Judicial Magistrate,
Ariyalur District (For information).
- 3.The Judicial Magistrate,
Jayakondam.
- 4.The Superintendent
Central Jail, Tiruchy.
5. The Inspector of Police,
Meensuruty Police Station.
6. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

with a direction to return
the original records to the
Court below concerned

MP (CO)
CB(10/03/2020)

Crl.A.No.845 of 2012