

Bail Slip

The Petitioner/Accused viz Rajesh, S/o.C.Swaminathan, was directed to be released on bail as per order of this Court dated 13/12/2012 and made in Crl.M.P.No.1 of 2012 in Cr.A.No.848/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.848 of 2012

Rajesh ... Appellant/Accused

Vs.

State represented by
The Assistant Commissioner of Police,
K-2 Police Station,
Ayanavaram Range,
Chennai. ... Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment and order dated 05.12.2012 passed in S.C.No.404 of 2010 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

For Appellant : Mr.R.Vivekananthan

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

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 05.12.2012 passed in S.C.No.404 of 2010 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

2. The facts in brief leading to the filing of this case are as under:

2.1 The deceased Shalini was the daughter of Kasturi and sister of Malini (PW1). They were residing at door no.7/13, Somasundaram First Street, Ayanavaram, Chennai. Shalini had studied up to IX standard and thereafter, she was working in various places. Shalini fell in love with the appellant and insisted that she would marry only him lest she should commit suicide.

2.2 Shalini and the appellant were in love for about six years and on her insistence, her marriage with the appellant was performed on 05.06.2009 by her parents at Padhala Ponnamman temple, Chennai. No relatives from the side of the appellant attended the wedding. After marriage, the appellant lived with Shalini in her natal home. The appellant was employed as Manager in a private concern and was required to be on tour frequently. On 14.05.2010, Shalini saw the appellant off in the bus stand and returned home. On 19.05.2010, around 12.00 noon, Shalini committed suicide by hanging from the ceiling fan in the bed room using her dupatta (M.O.1) after locking the door from inside. Her mother Kasturi, who was not at home then, returned and found the bed room door locked. Kasturi smelled a rat and called her brother Madhavan for help. Madhavan scaled over the window and found Shalini hanging down the ceiling fan. Hence, they all staved in and lowered her (Shalini's) body. Shalini was rushed to Mohanreddy Hospital, from where, she was taken to Kilpauk Medical College and Hospital, where, she was examined by Dr.Vaishnavipriya (PW6), who declared her "brought dead" vide accident register copy (Ex-P7). Her body was kept in the mortuary.

2.3 On the written complaint (Ex-P1) given by Kasturi, Parthasarathy, Sub-Inspector of Police, registered a case in Crime No.372 of 2010 under Section 174 Cr.P.C. and prepared the printed FIR (Ex-P12). In the complaint, Kasturi had stated about the love affair of Shalini, her marriage with the appellant, the couple staying with her after marriage, Shalini seeing the appellant off at the bus stand on 14.05.2010 when he left for Madurai and the suicide of Shalini on 19.05.2010. Kasturi had categorically stated that there was no dowry demand, but, Shalini was feeling very depressed, was not talking to anyone and not properly having food after she returned home after seeing the appellant off at the bus stand. She had also not alleged any act of cruelty against the appellant.

2.4 The investigation of the case was taken over by Sankaralingam (PW12), Assistant Commissioner of Police, who went to the place of occurrence, prepared the observation mahazar (Ex-P15) and rough sketch (Ex-P16). From the place of occurrence, he seized the dupatta (M.O.1) that was used by Shalini under mahazar (Ex-P17).

2.5 Since the death of Shalini was within seven years of marriage, Kalavathy (PW7), Executive Magistrate, conducted inquest over the body of Shalini and recorded the statements of witnesses vide Ex-P9. During inquest, a new theory was proffered by the family members of Shalini. They stated that the appellant was already married to Gomathi (PW11), which, he suppressed from Shalini and her family members; when Shalini came to know about it, she insisted that she be taken to meet his parents, for which, he bluntly refused and hence, she became depressed and committed suicide.

2.6 Kalavathy (PW7), Executive Magistrate, returned a finding that the suicide of Shalini was not on account of dowry demand, but, was due to the suppression of the earlier marriage. Therefore, the police altered the case from one under Section 174 Cr.P.C. to one under Sections 420, 498-A and 306 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998, (for brevity "the TNPHW Act") vide alteration report (Ex-P20).

2.7 Dr.Anbuselvan (PW4), who performed autopsy on the body of Shalini, in his evidence as well in the postmortem certificate (Ex-P5), has opined as follows:

"Opinion:

(b) The deceased would appear to have died of Asphyxia due to hanging."

2.8 The appellant was arrested on 21.05.2010 and based on his confessions, the police recovered the marriage invitation (Ex-P23) of the appellant with Gomathi (PW11) and the marriage album (M.O.2) under mahazar (Ex-P22).

2.9 After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.154 of 2010 for the offences under Sections 420, 498-A and 306 IPC and Section 4 (A) (1) of the TNPHW Act, against the appellant.

2.10 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.404 of 2010 and was made over to the Sessions Court (Mahalir Neethimandram), Chennai, for trial.

2.11 The trial Court framed charges for the aforesaid offences against the appellant and when questioned, he pleaded "not guilty".

2.12 To prove the case, the prosecution examined twelve witnesses, and marked twenty three exhibits and four material objects.

2.13 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he filed a written statement, in which, he has stated that he got married to Gomathi (PW11) on 21.05.2004 and they were issueless; Shalini was working with him and she knew his marital status and agreed to marry him and beget a child for him; he discussed this with Gomathi (PW11), who also agreed for it, but, stated that she will not attend the marriage and keep a low profile; accordingly, he got married to Shalini on 05.06.2009 at Padhala Ponniamman temple in the presence of the relatives of Shalini including

her mother; after marriage, when Kasturi started insisting that Shalini should be taken to his parental home, the appellant and Shalini felt embarrassed and did not know how to handle the situation; in such circumstances, when the appellant was away, Shalini committed suicide by hanging on 19.05.2010. On behalf of the appellant, 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 05.12.2012, acquitted the appellant of the offences under Section 498-A and 306 IPC and Section 4 (a) (1) of the TNPHW Act, but convicted him of the offence under Section 420 IPC and sentenced him to five years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment.

2.15 Challenging the above conviction and sentence, the appellant has preferred the present criminal appeal.

3. Heard Mr.R.Vivekananthan, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) for the respondent/State.

4. The nub of the issue is whether the conviction of the appellant for the offence under Section 420 IPC for concealing from Shalini his earlier marriage with Gomathi, could be sustained.

5. In this case, the neighbours viz., Lakshminarayanan (PW2), Renukadevi (PW3) and Rathinam (PW10) turned hostile. Kasturi, mother of Shalini died on 15.12.2010 and therefore, she could not be examined in the trial Court. The entire prosecution case rests on the evidence of Malini (PW1) and Gomathi (PW11).

6. Malini (PW1), in her evidence, has stated that her sister Shalini and the appellant were in love with each other for about six years; Shalini said that she would either marry the appellant or commit suicide; therefore, she was given in marriage to the appellant on 05.06.2009; after marriage, the couple lived with her mother Kasturi; the appellant would visit his parents twice a week; Shalini wanted the appellant to take her to his parents' house, but, the appellant avoided; her (PW1's) mother also wanted to meet the appellant's parents; on 13.05.2010, the appellant came and stayed in her (PW1's) mother's house; when her mother asked the appellant as to why he is not taking Shalini to his parents' house, the appellant was very evasive; when Shalini also demanded so, the appellant bluntly told her, "I will not take you to my parents' house. If you want to die, go and die"; on 19.05.2010, she received information that Shalini had committed suicide by hanging; her mother Kasturi gave the complaint (Ex-P1); only after Shalini's death, they came to know that the appellant was already married to Gomathi (PW11).

7. Gomathi (PW11), in her evidence, has stated that she got married to the appellant on 21.05.2004 and they were not blessed with a child; she knows Shalini; since she (PW11) did not conceive, she underwent treatment, but in vain; Shalini told her that she will marry the appellant and beget a child for them; she (PW11) agreed to it, but told Shalini that she will not attend the marriage; on 05.06.2009, Shalini and the appellant got married; she (PW11) also assured Shalini that she will not tell anyone about the marriage and would keep it as a secret; Shalini continued to be in her mother's house; she received news that Shalini died on 19.05.2010. This witness was not declared hostile by the prosecution.

8. As rightly submitted by the learned counsel for the appellant, there is no shred of material to show that Shalini did not know that the appellant was already a married person. The fact remains that Shalini and the appellant were in love with each other for about six years. Shalini did not insist that the appellant's parents should attend her marriage. Assuming for a moment that when Shalini came to know that the appellant was already a married man only after her marriage with him, she would have informed the same to her parents and relatives and would have created a hue and cry that the appellant had cheated her. On the contrary, the evidence of Malini (PW1) is to the effect that Shalini and the appellant were in love for about six years and Shalini bluntly told her parents that she would die if she is not given in marriage to the appellant. The trio viz., the appellant, Gomathi (PW11) and Shalini had entered into a pact to keep this as a golden secret. However, after marriage, Shalini's mother was prodding the appellant to introduce his parents and the situation became unmanageable and odd.

9. In such perspective of the matter, it cannot be stated that Shalini was completely unaware of the appellant's marriage with Gomathi (PW11). Hence, the conviction of the appellant for the offence under Section 420 IPC, warrants interference.

As a result, this criminal appeal is allowed by setting aside the judgment and order dated 05.12.2012 passed in S.C.No.404 of 2010 on the file of the Sessions Court (Mahalir Neethimandram), Chennai. As a sequel, the appellant is acquitted of the charge under Section 420 IPC. Bail bond, if any, executed by the appellant shall stand cancelled. Fine amount, if any, paid by the appellant shall be refunded.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
(Mahalir Neethimandram),
Chennai.
 2. The Assistant Commissioner
of Police,
K-2 Police Station,
Ayanavaram Range,
Chennai.
 3. The V Metropolitan Magistrate,
Egmore, Chennai.
 4. The Chief Metropolitan Magistrate,
Egmore, Chennai.
 5. The Superintendent,
Central Prison,
Puzhal, Chennai.
 6. The Director General of Police,
Mylapore, Chennai.
 7. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.
 8. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.
- with a direction to return
the original records to the
Court below concerned

+1cc to Mr.R.Vivekananthan, Advocate SR.No.4450

Crl.A.No.848 of 2012

RJI (CO)
GMY (12/02/2020)

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