

Bail Slip

The Appellant herein/Accused Viz., P.Anil Thomas S/o Philip Thomas was directed to be rerleased on bail as per order of this Court dated 20.02.2013 made in M.P.No.1 of 2013 in Criminal Appeal No.117 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.01.2020

PRONOUNCED ON : 24.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.117 of 2013

P.Anil Thomas

... Appellant/Accused

Vs.

State represented by
The Inspector of Police,
F-2 Police Station,
Egmore,
Chennai - 600 008.

.... Respondent/Complainant

Prayer:Criminal Appeal filed under Section 374 (2) Cr.P.C. against the judgment and order dated 02.02.2013 passed in S.C.No.270 of 2008 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

For Appellant : Mr.R.John Sathyan

For Respondent : Mr.R.Surya Prakash
Government Advocate
(Crl. Side)

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 02.02.2013 passed in S.C.No.270 of 2008 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 Nisha @ Suma was a Dentist and was the daughter of Chacko (PW1) and Mariamma (PW2) and younger sister of Sinu Jacob (PW3). The family hails from Kottayam area in Kerala and they are Christians.

2.2 The appellant was a medical practitioner and was in railway service in Chennai. The appellant married Nisha on 27.12.1999 and the couple was blessed with two children Anjoli and Sara, who were aged about seven and five years, respectively, at the time of the occurrence and the family was living at door no.265 E, Gandhi Irwin Road, Southern Railway Colony, Chennai.

2.3 It is alleged that the appellant was having an extra marital affair with another lady and was tormenting Nisha and was not permitting her and the children to go even to her natal home in Kottayam to see her parents.

2.4 On 27.05.2007, Nisha and her two children boarded Trivandram mail at the Chennai Central Railway Station to Kottayam. On coming to know of this, the appellant found them in the train, took their tickets saying that he will organize berth for them and tore the tickets. He brought them back home and thrashed Nisha. The next day i.e., on 28.05.2007, when the appellant had gone for work, Nisha committed suicide by hanging in the house. The appellant returned home around 1.30 p.m. on 28.05.2007 and found the children playing in the front room. The bed room door was locked from inside and it was not opened despite knocks. The bed room door was staved in by the appellant and to his shock, he found Nisha hanging down from the ceiling fan using her dupatta.

2.5 On the written complaint (Ex-P8) given by the appellant, Ekambaram (PW8), Sub-Inspector of Police, registered a case in Crime No.1003 of 2007 under Section 174 Cr.P.C. and prepared the printed FIR (Ex-P9). Information was sent to the parents of Nisha and on their arrival from Kottayam, Chacko (PW1) gave a written complaint (Ex-P1), based on which, the case was altered from one under Section 174 Cr.P.C. to one under Section 306 IPC vide alteration report (Ex-P15).

2.6 The investigation of the case was taken over by Udayakumar (PW9), Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex-P10) and rough sketch (Exs-P11 and P12) and seized the dupatta (M.O.1) of Nisha under the cover of mahazar (Ex-P13).

2.7 Inquest was conducted over the body of Nisha and the inquest report was marked as Ex-P17. Dr.T.Vedanayagam, who performed autopsy over the body of Nisha, in his evidence as well in the post-mortem certificate (Ex-P4), has opined as follows:

"An abraded contusion seen over the left cheek in an area of 3x3 cm.

Opinion:

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

The viscera report (Ex-P5) states that poison was not detected in the samples of the visceral organs.

2.8 Sinu Jacob (PW3), elder brother of Nisha, who was working in Qatar at the time of the occurrence, handed over the copies of the e-mails received by him from Nisha.

2.9 After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.11 of 2008 before the XIV Metropolitan Magistrate Court, Egmore, Chennai, for the offence under Sections 498-A and 306 IPC, 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.270 of 2008 and made over to the Sessions Court (Mahalir Neethimandram), Chennai, for trial.

2.11 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".

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

2.13 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The appellant examined himself as DW1 and one Duregesh Kumar, Junior Telecom Officer, Broadband Networks, Bangalore - as DW2. However, he did not mark any exhibit.

2.14 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 02.02.2013 in S.C.No.270 of 2008, convicted and sentenced the appellant as under:

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

The aforesaid sentences were ordered to run concurrently.

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

3. Heard Mr.R.John Sathyan, learned counsel for the appellant and Mr.R.Surya Prakash, learned Government Advocate (Crl. Side) for the respondent/State.

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

- (a) The relationship of the parties; and
- (b) The suicide of Nisha @ Suma by hanging in her matrimonial home on 28.05.2007.

5. The point for determination is whether the appellant had inflicted cruelty on Nisha @ Suma and had abetted her suicide. Since the suicide of Nisha was beyond seven years of marriage, the provisions of Section 113-A of the Evidence Act cannot be invoked.

6. Chacko (PW1), Mariamma (PW2) and Sinu Jacob (PW3) gave evidence in Malayalam and it was translated into Tamil and was recorded by the Court. These witnesses have spoken to about the marriage of Nisha with the appellant, the birth of the two children and the suffering undergone by Nisha at the hands of the appellant. They have stated that the appellant would not permit Nisha to even speak to them, much less see them. Chacko (PW1) and Mariamma (PW2) have stated that Nisha told them that she was leaving Chennai on 27.05.2007 and they were eagerly waiting to receive her, but, they heard the news that she was dead.

7. Sinu Jacob (PW3), elder brother of Nisha, has stated that he was working in Qatar at the time of occurrence; his sister Nisha had contact with him by E-mail; the appellant would not permit her even to speak to him (PW3) and beat her; she would

convey all this by e-mail; he received an e-mail from his sister on 28.05.2007, in which, she stated that she boarded the train with the children to go home, but, the appellant found out, took their tickets, tore them, took them back home and beat her. The said e-mail was marked as Ex-P2, which reads as under:

"Hai mon how r u? Here gain he started his original form. He is telling I am still supporting my parents loving them he is not getting my love as a wife so I finally thought let me go back home so I rang up home and went to railway station got ticket with my kids we were in the train he came there also then he asked ticket for arranging the berth and like a fool I have given it then he torn it off he came back home and started the next part of beating now half of my face is swollen now I am sure either he will kill me and I will do it myself any way just inform my parents if anything is going to happen please do not come here to see my he may do anything to them also in front of everyone he is just worst than cruel mad man as soon as you read this mail please ring up home and tell I am still in Chennai only ok fine see you all bye."

(emphasis supplied)

8. The appellant, in his evidence, has stated that he had a cordial relationship with his wife; his wife was secretly giving monies to her parents, which he was objecting; on 27.05.2007, while he was in office, his wife called him and told him that she was leaving for Kerala with the children; immediately, he went to the Central Railway Station and saw them in the general compartment of Trivandram mail; he did not want them to travel in unreserved compartment and that is why, he brought them back home. Thus, the appellant has admitted the fact that Nisha and the children had boarded the train to Kottayam and that he had brought them back.

9. According to the appellant, the reason for bringing them back was that, he did not want them to travel by general class. The fact remains that the appellant is a Senior Officer in the Southern Railway. Being a railway doctor, he could have easily obtained accommodation for his wife and his children in an AC compartment by availing emergency quota. At the same time, Nisha was not an illiterate lady, but a qualified dentist. The fact that she boarded the general compartment in Trivandram mail along with the children itself shows that she wanted to escape from the appellant. Immediately after she was brought home, she sent the above e-mail to her brother. Apart from this e-mail, other e-mails were marked as Ex-P3 series.

10. A reading of these e-mails show that the appellant was not even permitting his wife to speak to her own brother by Skype. These e-mails including the last one that has been extracted above can be treated as dying declarations relevant under Section 32(2) of the Evidence Act.

11. The learned counsel for the appellant placed strong reliance on the evidence of Durgesh Kumar (DW2), who has stated that the e-mail ID: sumajacob1974@yahoo.co.in was created from the broadband connection of Sinu Jacob (PW3). Based on this evidence, the learned counsel for the appellant submitted that it was Sinu Jacob (PW3) who had created the e-mail ID and all the e-mails have been concocted.

12. This Court is unable to subscribe to this submission made by the learned counsel for the appellant, because, Sinu Jacob (PW3) was employed in Qatar, where, BSNL Network does not operate. To get a broadband connection, there should be a landline connection. Nisha used her brother's broadband connection to open a yahoo mail account in her name in the year 2006. At that time, no one would have thought that Nisha would commit suicide on 28.05.2007.

13. The learned counsel for the appellant contended that the e-mails lack the certification under Section 65-B of the Evidence Act. At the time of marking these e-mails, the defence did not raise any objection. These e-mails were marked prior to the judgment of the Supreme Court in Anvar vs. Basheer¹. Subsequently, in Sonu @ Amar Vs. State of Haryana², the Supreme Court has held that if no objection to the marking of an electronic record for the absence of Section 65(b) of the Evidence Act was taken during trial, such objection cannot be taken at the appellate stage.

14. Even if we keep the e-mails aside for a moment, the oral evidence of Chacko (PW1), Mariamma (PW2) and Sinu Jacob (PW3) are to the effect that the appellant was continuously subjecting his wife Nisha to cruelty. He was not even allowing her to meet or speak to her parents. The parents (PWs.1 & 2), in their evidence, have stated that Nisha told them that she is coming home and were waiting eagerly to receive her, but in vain. That apart, Dr.T.Vedanayagam (PW6), who performed autopsy on the body of Nisha, has noted an abraded contusion over the left cheek in an area of 3x3 cm. This external injury on the cheek has nothing to do with the ligature mark around the neck. In the cross-examination, Dr.T.Vedanayagam (PW6) has clearly explained that the said contusion is an ante-mortem injury. This amply

1 (2014) 10 SCC 473

2 JT (2017) 7 SC 362

corroborates the prosecution case that the appellant had beaten Nisha after bringing her home from the Railway Station. Even in the e-mail (Ex-P2), Nisha has stated that, "....started the next part of beating now half of my face is swollen.....". Thus, the evidence on record clearly shows that, since marriage, the appellant has been subjecting Nisha to such an amount of harassment that she was pushed to the wall and found suicide to be the only outlet for her miseries.

15. Very recently, in Ude Singh and Others Vs. State of Haryana³, the Supreme Court has discussed threadbare all the earlier rulings under Section 306 IPC and has held as follows :

"16.1 ... But, on the other hand, if the appellant by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC."

16. The learned counsel for the appellant submitted that this Court may show some sympathy in the substantive sentence of imprisonment slapped on the appellant by the trial Court, bearing in mind the fact that the two daughters are being brought up by him.

17. Accepting the submission made by the learned counsel for the appellant, this Court is of the view that, interests of justice will be served, if the substantive sentence of ten years rigorous imprisonment imposed by the Trial Court for the offence under Section 306 IPC is reduced to five years rigorous imprisonment and it is ordered accordingly. However, the conviction and sentence of the appellant for the offence under Section 498-A IPC and his conviction for the offence under Section 306 IPC, are confirmed. The sentences shall run concurrently. The sentence of fine and the default sentence shall remain the same.

As a result, this criminal appeal is partly allowed. The trial Court is directed to secure the appellant and commit him to prison for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
(Mahalir Neethimandram),
Chennai.

2. The Inspector of Police,
F-2 Police Station,
Egmore,
Chennai - 600 008.

3. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

4. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

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

5. The Metropolitan Magistrate No.XIV,
Egmore, Chennai.

6. The Chief Metropolitan Magistrate,
Egmore, Chennai.

7. The Superintendent,
Central Prison, Puzhal, Chennai.

Crl.A.No.117 of 2013

mr[co]
srg 28/02/2020

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