

BAIL SLIP

The Petitioner/Accused viz., Balu @ Balasubramani, S/o.Shanmugam be and hereby was directed to be released on bail as per order of this Court, dated 29/05/2013 and made in CrI.M.P.No. 1 of 2013 in CrI.A.No. 381 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.381 of 2013

Balu @ Balasubramani .. Appellant/
appellant

Vs.

State rep. by
Inspector of Police
AWPS Perur Police Station
Coimbatore
Cr.No.15 of 2010 ... Respondent/Complainant

Criminal Appeal filed under Sections 374(2) Cr.P.C., to set aside the judgment and order dated 20.03.2013 passed by the Sessions Judge (Mahila Court), Coimbatore in S.C.No.266 of 2010.

For Appellant : Mr.A.M.Rahamath Ali
for Mr.K.Balasubramaniam

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

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 20.03.2013 passed by the Sessions Judge (Mahila Court), Coimbatore in S.C.No.266 of 2010.

2.The prosecution story is as under :

2.1.The deceased Kavitha was the daughter of Munusamy (P.W.1) and Selvi (P.W.2). Their family was from Melur village in Ooty district. Munusamy (P.W.1) had an elder sister by name Muniammal, whose son is the appellant. Muniammal died and after her death, the appellant was living with his father Shanmugam in door No.12/13, Veeramachiyamman Koil Street, Chettipalayam, Coimbatore and was working as a freelance driver.

2.2.Both families decided to give Kavitha in marriage to the appellant and accordingly, their marriage was solemnized on 21.11.2007. At the time of marriage, Kavitha was given around 10 sovereigns of gold and other household articles. After marriage, Kavitha lived with the appellant in the above said address at Coimbatore. Kavitha conceived and after the baby shower ceremony, she went to her natal home, where she delivered a boy baby in August 2009. Seven months thereafter, she joined the appellant and lived with him.

2.3.It is alleged that the appellant belonged to a dance group and would dance with girls, which was not to the liking of Kavitha. That apart, it was alleged that the appellant was addicted to liquor and that he would beat Kavitha, whenever she questioned him about his activities.

2.4.On 22.03.2010, the child fell ill and the appellant was not at home. Therefore, Kavitha took the child to the house of Sathyamoorthy (P.W.12), her uncle, who attended to the child. The child was running fever. Kavitha was unable to contact the appellant because, he had switched off his phone. When the appellant came to know of it, he returned home around 3.00 p.m. and found that the child was unwell. At that time, Kavitha handed over the child to the appellant, rushed inside her house, locked the room from inside and consumed auramine powder (cow dung powder) mixed in water. The appellant and the neighbours sensed that Kavitha was up to something drastic and therefore, Ganesamoorthy (P.W.5), a neighbour, climbed the roof of the house, gained entry inside and tried to prevent Kavitha from consuming the poison, but, in vain. Kavitha was rushed to a private clinic, where, Dr.Azhagesan (P.W.7) examined her at 05.00 p.m. and gave her first aid and referred her to the Government Hospital, Coimbatore. Kavitha was taken to the Government Hospital, Coimbatore, where, she was examined by Dr.Bhuvana (P.W.9) at 06.25 p.m. on 23.02.2010 and was declared 'brought dead' vide Accident Register copy (Ex.P4).

3.Information was sent to the family of Kavitha, pursuant to which, they came to Coimbatore and her father Munusamy (P.W.1) lodged a written complaint (Ex.P1), based on which, Anandalakshmi (P.W.14), Sub Inspector of Police, registered a case in Crime No.15 of 2010 under Section 174 Cr.P.C. and prepared the printed F.I.R. (Ex.P8).

4.Investigation of the case was taken over by Mutharasu (P.W.16), Deputy Superintendent of Police, who went to the place of occurrence and prepared observation mahazar (Ex.P2) and rough sketch (Ex.P10), in the presence of Thangavelu (P.W.6) and one Chittibabu (not examined). The Investigating Officer also seized a brass vessel (M.O.1) containing some remnants of the liquid under mahazar (Ex.P3).

Court to Tamil Nadu Forensic Science Laboratory for examination, where, Uma (P.W.15) examined it and in her evidence as well in the report (Ex.P9), has opined that, "auramine, a poisonous basic dye was detected in the washings."

6.Since the death of Kavitha was within seven years of marriage, Balachandran (P.W.13), Revenue Divisional Officer conducted inquest over the body and examined Munusamy (P.W.1), Selvi (P.W.2), Muniyandi (P.W.4) and the appellant. After examining them, he gave his report (Ex.P7), opining that the death of Kavitha was not due to dowry harassment, but on account of cruelty inflicted on her. Therefore, the police altered the case to one under Section 498-A and 306 IPC vide alteration report (Ex.P11). The appellant was arrested by the police on 23.03.2010.

7.Dr.Jayasingh (P.W.10) performed autopsy on the body of Kavitha and sent the samples of visceral organs to the Tamil Nadu Forensic Science Laboratory for examination. After receiving the viscera report, Dr.Jayasingh (P.W.10) issued the post-mortem certificate (Ex.P5) and gave final opinion (Ex.P6) stating, "the deceased would appear to have died of auramine poison."

8.After examining witnesses and collecting various reports, the police completed the investigation and filed final report in P.R.C.No.7 of 2011 before the Judicial Magistrate No.VI, Coimbatore for the offence under Sections 498-A and 306 IPC against the appellant.

9.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.266 of 2010 and was made over to the Mahila Court, Coimbatore, for trial. The trial Court framed charges under Sections 498-A and 306 IPC and when questioned, the appellant pleaded "not guilty".

10.To prove the case, the prosecution examined 16 witnesses, marked 12 documents and 1 material object. When the appellant was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he simply denied the same, but did not offer any explanation as to the circumstance under which, his wife Kavitha committed suicide. No witness was examined from the side of the appellant nor any document marked.

11.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 20.03.2013 in S.C.No.266 of 2010, convicted and sentenced the appellant as follows :

Provision under which convicted	Sentence
Section 498-A IPC	one year rigorous imprisonment and fine of Rs.2,000/-, in default, to undergo one month rigorous imprisonment
Section 306 IPC	seven years rigorous imprisonment and fine of Rs.10,000/-, in default, to undergo three months rigorous imprisonment

Challenging the conviction and sentence, the appellant is before this Court.

12. Heard Mr.A.M.Rahamath Ali, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

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

- i. the inter se relationship between the parties;
- ii. the marriage of Kavitha with the appellant on 21.11.2007;
- iii. after marriage, Kavitha lived with the appellant in door No.12/1313, Veeramathiamman Koil Street, Chettipalayam, Coimbatore;
- iv. the couple were blessed with a male child in August 2009;
- v. Kavitha committed suicide by consuming auramine in her matrimonial home on 22.03.2010; and

14. The nub of the issue is, whether the appellant had inflicted cruelty on Kavitha as defined under Section 498-A IPC and whether he had abetted her suicide.

15. Munusamy (P.W.1), in his complaint (Ex.P1) as well in the statement to Balachandran (P.W.13), R.D.O., during inquest, has stated that they were living happily till the birth of the child. The crux of the allegation was that, the appellant would come drunk; the appellant was part of a dance troupe and would endlessly talking to dance girls; consume liquor and beat Kavitha, whenever she questioned him.

16. The appellant has also admitted that he was part of a dance troupe, when he was examined in the inquest. The statement made to the Executive Magistrate during inquest, does not suffer the vice of Section 162 Cr.P.C. and can be used for corroboration and contradiction, unlike the one recorded by the police. Of course, it is not a substantive piece of evidence, but, an admission made therein, is relevant under Section 21 of the Evidence Act and can be used against

17.The fact that the appellant was interested in dance was known to the family of Kavitha, even at the time of marriage. The appellant was a driver by profession and a dancer by passion. However, Munusamy (P.W.1), Selvi (P.W.2), Eswari (P.W.2) and Muniyandi (P.W.4) gave a totally different version in their evidence. They have all stated that the appellant was demanding dowry and was tormenting Kavitha for it. They have also stated that the appellant wanted money for purchasing an omni van and that was also given to him. These versions made by them vary from the earlier versions in the complaint (Ex.P1) given by Munusamy (P.W.1) and their statement to Balachandran (P.W.13) and they were confronted to them under Section 145 of the Evidence Act and was proved in the cross-examination of Balachandran (P.W.13) and Mutharasu (P.W.16), the Executive Magistrate and the Investigating Officer, respectively.

18.The imputations in the charges that were framed against the appellant were that, he used to harass Kavitha after consuming liquor and demand money from her, for spending on the dance troupe girls. Admittedly, the appellant's mother Muniammal was the sister of Munusamy (P.W.1). After the death of Muniammal, Munusamy (P.W.1) gave his daughter in marriage to the appellant. It is there in the evidence of Munusamy (P.W.1) that the appellant was working as a driver and that, he would also dance. It was never their case that the appellant was demanding Rs.50,000/- as dowry from Kavitha.

19.Munusamy (P.W.1), in his complaint (Ex.P1), has stated that, after delivery, Kavitha was dropped in her matrimonial home with the baby on 10.02.2010; on 20.03.2010, around 05.15 p.m., Kavitha telephoned him and asked him to come and take her home; when he asked her as to what had happened, she refused to say anything, but insisted that he should immediately come there to take her back home; so, he went to Kavitha's house; at that time, Kavitha told him that the appellant is coming drunk and picking up quarrels everyday and therefore, she can no more live with him; when he wanted to take Kavitha and the child back, the appellant assured him that he will mend his ways and that he will not part company with the child; therefore, he left for his village at 10 a.m. on 21.03.2010.

20.In the statement to Balachandran (P.W.13) during the inquest, Munusamy (P.W.1), has stated that, his daughter Kavitha called him urgently; he went to her house; she wanted to go with him; but, the appellant threatened her, by saying that he will pour kerosene on himself and commit suicide, if the child is separated from him. Therefore, he (P.W.1) left Kavitha and her child with the appellant and returned to his village.

21.Similarly, the appellant, in his statement to Balachandran (P.W.13), has also said that his father-in-law came on the previous day i.e. On 21.03.2010, to pick his daughter and grandchild, but, he refused to send them and told

his father-in-law that he would commit suicide by self-immolation, if the child is separated. However, Munusamy (P.W.1), in his evidence, has stated that, the appellant threatened him, by saying that he will pour kerosene on them i.e. on Munusamy (P.W.1), Kavitha and the child, if he (P.W.1) takes them to his house. This exaggeration in the testimony of Munusamy (P.W.1) qua his previous statement to Balachandran (P.W.13) during the inquest, was confronted as required under Section 145 of the Evidence Act.

22. What happened exactly on the fateful day viz. 22.03.2010 can be discerned from the evidence of two witnesses viz. Ganesamoorthy (P.W.5) and Sathyamoorthy (P.W.12).

23. Sathyamoorthy (P.W.12), in his evidence, has stated that, he is a relative of Kavitha and the appellant; on 22.03.2010, Kavitha brought her baby to his house and said that he is having fever; so, he kept thermometer and found that the temperature was not very high; in the meantime, the appellant came to his house and a quarrel ensued between the appellant and Kavitha; Kavitha handed over the baby to the appellant, rushed to her house and locked herself and drank auramine poison; neighbours jumped through the roof and tried to save her, but in vain.

24. Ganesamoorthy (P.W.5), in his evidence, has stated that, he knows the appellant and Kavitha, since he was a neighbour; there used to be frequent quarrels between the couple; on 22.03.2010, there was a commotion in Kavitha's house; so, he and another person scaled the roof, gained entry into Kavitha's house and saw Kavitha drinking something in a brass vessel; they jumped inside and pushed the brass vessel and opened the door for others to gain entry; Kavitha was carried to the hospital, where she died.

25. A conspectus of the evidence on record shows that, the allegation that appellant was demanding Rs.50,000/- from Kavitha and was harassing her is not true. The appellant was a dancer, even at the time of marriage and Kavitha knew of it. Admittedly, the couple were happy till the child was born. However, there used to be quarrels between them because, the appellant was consuming liquor and was not taking care of the house. When the child was sick, the appellant was not at home and became incommunicado. This had frustrated Kavitha and so, when the appellant came home in the afternoon, she quarrelled with him, handed over the baby to him, rushed inside the house, locked it from inside and consumed auramine. Kavitha appears to have done all these in a fit of anger and in the spur of the moment. The evidence on record is insufficient to sustain the conviction of the appellant under Section 306 IPC albeit the presumption under Section 113-A of the Evidence Act. However, the evidence is sufficient to sustain the conviction of the appellant under Section 498-A IPC.

In the result, this criminal appeal is partly allowed.

While the conviction of the appellant of the offence under

Section 306 IPC is set aside, his conviction and sentence of the offence under Section 498-A IPC, stands confirmed. The trial Court is directed to secure the presence of the appellant to undergo the remaining period of sentence, if any. The appellant will be entitled to set off under Section 428 Cr.P.C. The Registry is directed to transmit the original records to the trial Court forthwith.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge (Mahila Court)
Coimbatore.
- 2.The Inspector of Police
AWPS Perur Police Station
Coimbatore.
- 3.The Public Prosecutor
High Court, Madras.
- 4.The Deputy Registrar/Section Officer,
Criminal Section,
High Court, Madras.
- 5.The Judicial Magistrate No.VI,
Coimbatore.
- 6.Do Thro The Chief Judicial Magistrate,
Coimbatore.
- 7.The Superintendent, Central Prison,
Coimbatore.

+1cc to Mr.K.Balasubramaniam, Advocate, S.R.No. 14538

CRL.A.No.381 of 2013

PA(CO)
GN(20/03/2020)