

Bail Slip

The Appellant/Accused, namely Sekar S/o.Chinnasamy Accused was directed to be released on bail as per order dated 05.06.2013 in MP.NO.1/13 IN CRL A.NO.386/2013 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.386 of 2013

Sekar
S/o.Chinnasamy

... Appellant/ 1st Accused

Vs.

State represented by
The Inspector of Police,
Palacode Police Station,
Dharmapuri District.

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) Cr.P.C. against the judgment and order dated 28.03.2013 passed in S.C.No.14 of 2011 on the file of the Additional District and Sessions Court, Dharmapuri.

For Appellant : Mr.R.John Sathyan

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

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 28.03.2013 passed in S.C.No.14 of 2011 on the file of the Additional District and Sessions Court, Dharmapuri.

2. The long and short of the facts leading to the filing of this case are as under:

2.1 The deceased Thenmozhi was the daughter of Salammal (PW1) and Govindasamy (PW2), and sister of Paramasivam (PW3) and Radhika (PW7). Their family hails from Kadagathur village in Dharmapuri.

2.2 Sekar (A1) is the son of Chinnasamy (A2) and Malliga (A3) and they were from Pungankottai village in Dharmapuri District.

2.3 Thenmozhi was given in marriage to Sekar (A1) on 02.07.2006 and they were blessed with a male child. The couple was living separately adjacent to the house of Sekar's (A1's) parents (A2 & A3). On 10.02.2010, around 10.00 a.m, Thenmozhi committed suicide by hanging in her matrimonial house using a saree (M.O.1), when Sekar (A1) was away with the child. Sekar (A1) returned home and was shocked to find his wife hanging and so, he lowered her body and carried her to the Government Hospital, Palacode, where, she was declared "brought dead". Information was passed on to the family of Thenmozhi and they came to Sekar's house on the same day.

2.4 On the written complaint (Ex-P1) given by Salammal (PW1), Rajendiran (PW13), Inspector of Police, registered a case in Crime No.41 of 2010 for the offence under Section 174 Cr.P.C. and prepared the printed FIR (Ex-P14). He went to the place of occurrence and prepared the observation mahazar (Ex-P2) and rough sketch (Ex-P15) in the presence of witnesses Sivan (PW8) and Ravi (not examined). He seized a saree (M.O.1) under mahazar (Ex-P3).

2.5 Since Thenmozhi had died within seven years of marriage, Manivannan (PW11), Revenue Divisional Officer, who conducted inquest over the body of Thenmozhi, in his evidence as well in the inquest report (Ex-P10), has stated that the death of Thenmozhi was not due to dowry harassment, but, on account of cruelty meted out to her by Sekar (A1) and his parents (A2 & A3).

2.6 The investigation of the case was taken over by Panjavarnam (PW12), Assistant Commissioner of Police, who arrested the accused and filed an alteration report (Ex-P11), altering the case from one under Section 174 Cr.P.C. to one under Section 304-B IPC.

2.7 Dr.Malathy (PW10) performed autopsy on the body of Thenmozhi and sent the samples of visceral organs to the Tamil Nadu Forensic Science Department, for medical examination and report. The viscera report (Ex-P8) shows that poison was not detected. The hyoid bone report (Ex-P7) shows that the same was intact. After obtaining these reports, Dr.Malathy (PW10) issued the postmortem certificate (Ex-P6), wherein, she has opined as follows:

"Opinion:

The deceased would appear to have died due to mechanical asphyxia due to hanging 8 - 12 hours prior of autopsy."

2.8 After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.29 of 2010 before the Judicial

Magistrate Court, Palacode, for the offences under Section 304-B IPC and Section 4 (b) of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 (for brevity "the TNPHW Act"), against Sekar (A1), Chinnasamy (A2) and Malliga (A3).

2.9 On appearance of the accused, 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.14 of 2011 and was made over to the Additional District and Sessions Court, Dharmapuri, for trial.

2.10 The trial Court framed charges for the offences under Section 304-B IPC and Section 4 (b) of the TNPHW Act, against the accused. When questioned, the accused pleaded "not guilty".

2.11 To prove the case, the prosecution examined thirteen witnesses and marked fifteen exhibits and one material object.

2.12 When the accused were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the allegations, but Sekar (A1) explained that, on the fateful day, he had a quarrel with his wife as she had pledged some jewels and after quarrel, he left the house with the child; when he returned, he was shocked to find his wife hanging and so, he lowered her body and rushed her to the Government Hospital, Palacode. From the side of the accused, no witness was examined nor any document marked.

2.13 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 28.03.2013 in S.C.No.14 of 2011, acquitted Sekar (A1), Chinnasamy (A2) and Malliga (A3) of the charges under Section 304-B IPC and Section 4-B of the TNPHW Act that were framed against them, but, convicted Sekar (A1) of the offence under Section 498-A IPC and sentenced him to two years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo three months rigorous imprisonment.

2.14 Challenging the above conviction and sentence, Sekar (A1) is before this Court.

3. Heard Mr.R.John Sathyan, learned counsel for Sekar (A1) and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

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

- (a) the inter se relationship of the parties;
- (b) marriage of Sekar (A1) with Thenmozhi on 02.07.2006;

- (c) Sekar (A1) was working as a lorry driver and was residing away from his parents in a separate household in Pungankottai village, which is about 6 kms away from Thenmozhi's natal village;
- (d) the couple had a male child aged about 2 ½ years; and
- (e) on 10.02.2010, Thenmozhi committed suicide by hanging in her matrimonial home.

5. The trial Court has acquitted all the accused of the charges under Section 304-B IPC and Section 4-B of the TNPHW Act and the State has not chosen to file any appeal challenging the same.

6. The short question in this appeal is whether the evidence on record is sufficient to sustain the conviction of Sekar (A1) of the offence under Section 498-A IPC.

7. Relevant it is to state here that presumptions under Sections 113-A and 113-B IPC cannot be used against Sekar (A1), as the question before this Court now in this appeal is not on the cause of Thenmozhi's suicide, but, whether Thenmozhi was subjected to cruelty simpliciter within the meaning of Section 498-A IPC.

8. In the complaint (Ex-P1) that was given by Salammal (PW1), she had made allegations mainly against Chinnasamy (A2) and Malliga (A3), parents of Sekar (A1). The crux of the allegation is that she (PW1) gave Rs.20,000/- to Thenmozhi for purchasing gold jewels, but, Thenmozhi had used the same for lending without the knowledge of her husband and parents-in-law; when her (Thenmozhi's) parents-in-law came to know of it, they started taunting her and one year prior to Thenmozhi's suicide, Chinnasamy (A2) had assaulted her and so, she returned to her natal home and after mediation, she was sent back.

9. When Salammal (PW1) was examined by Manivannan (PW11), Revenue Divisional Officer, during inquest, she maintained the same story. However, in her evidence, she improved by saying that Sekar (A1) also joined his parents (A2 & A3) in demanding Rs.20,000/-. She (PW1) further stated that one day prior to suicide, Thenmozhi called her father Govindasamy (PW2), cried to him and told him that she is being abused by her husband (A1) and parents-in-law (A2 & A3) for not bringing enough jewellery like other two daughters-in-law.

10. In the cross-examination, Salammal (PW1), mother of Thenmozhi, admitted that the marriage was performed by the accused in their village viz., Pungankottai village; after marriage Sekar (A1) and Thenmozhi were living separately and not with (A2) Chinnasamy and Malliga (A3); the expenses for delivery of the child was also borne by them. She (PW1) was also confronted and contradicted with the improvements made

by her in her evidence vis-a-vis her complaint (Ex-P1) and the statement made to the Revenue Divisional Officer (PW11) during inquest.

11. The improvements made by Salammal (PW1), Govindasamy (PW2), Paramasivam (PW3), Perumal (PW6) and Radhika (PW7) in their evidence vis-a-vis their statements to the police were also confronted to them and the contradictions were proved through the evidence of the Investigating Officer (PW12). None of the witnesses has stated before the Revenue Divisional Officer (PW11) that Thenmozhi was physically assaulted by Sekar (A1), but in their evidence before the Court, they improved their case by alleging that Sekar (A1) joined his parents (A2 & A3) in the assault of Thenmozhi.

12. Admittedly, Sekar (A1) was working as a lorry driver and the evidence on record shows that he used to be away on work for several days leaving his wife and child behind. As stated above, at every stage of the case, the witnesses have been improving their version. Initially, they had grievance only against the parents (A2 & A3) of Sekar (A1) in connection with the quarrel that took place one year prior to the incident regarding Rs.20,000/-.

13. The trial Court has convicted Sekar (A1) primarily on the statement made by him under Section 313 Cr.P.C., as could be seen from paragraph no.21 of the judgment. Sekar (A1) faced charge under Section 304-B IPC, which carries with it, the presumption under Section 113-B IPC and in that context, he came forward to explain as to what had happened in the house immediately before the suicide.

14. Sekar (A1), in his statement to the Revenue Divisional Officer (PW11), during inquest, has stated that he had quarreled with his wife as she has pledged some jewels and the same cannot be used as a substantive piece of evidence to hold that he had inflicted cruelty on her.

15. Universally, no matrimonial relationship can be bereft of domestic quarrels and such quarrels cannot be elevated to the level of cruelty within the meaning of Section 498-A IPC, in the absence of credible evidence.

16. In view of the foregoing discussion, this Court holds that the evidence on record is insufficient to uphold the conviction of Sekar (A1) for the offence under Section 498-A IPC.

17. Resultantly, this criminal appeal is allowed by setting aside the judgment and order dated 28.03.2013 passed in S.C.No.14 of 2011 on the file of the Additional District and Sessions Court, Dharmapuri.

Ex consequenti, Sekar (A1) is acquitted of the charge under Section 498-A IPC. The bail bond executed by the accused shall stand cancelled. Fine amount, if any, paid by the accused shall be refunded.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd
To

1. The Inspector of Police,
Palacode Police Station,
Dharmapuri District.

2. The Additional District and
Sessions Court,
Dharmapuri.

3. The Section Officer,
(Crl.Side)
Madras High Court,
Chennai - 104.

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

A.SK(20/03/2020)

Crl.A.No.386 of 2013

सत्यमेव जयते
WEB COPY