

BAIL SLIP

The Appellant herein/Accused namely Shaik Dawood S/o.Said Mohamed (in S.C.No. 326 of 2010 on the file of Sessions Judge, Mahila Court, Chennai) was directed to be released on bail by order of this Court dated 25.07.2013 and made in M.P.No.1 of 2013 CrI.A. 501/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.A.No.501 of 2013

Shaik Dawood ... Appellant

Vs.

State Represented by
The Inspector of Police,
H-1 Washermenpet Police Station,
Washermenpet,
Chennai - 600 021. Respondent

Criminal Appeal filed under Section 374 Cr.P.C.,
praying to set aside the judgment of conviction and sentence,
dated 18.07.2013, passed by the Sessions Judge, Mahila Court,
Chennai, in S.C.No.326 of 2010.

For Appellant : Mr.G.Saravana Kumar

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

J U D G M E N T

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence, dated 18.07.2013, passed by the Sessions Judge, Mahila Court, Chennai, in S.C.No.326 of 2010.

2.The prosecution case is as under :

2.1.The deceased Shajeenabi was the daughter of Kamroonbi (P.W.1) and Sameer (P.W.2). The family hailed from Thiruvallangadu Village in Thiruvallur District. Sameer (P.W.2) was a cutler in Kerala.

2.2.The appellant was a freelance Electrician.

2.3.Shajeenabi was given in marriage to the appellant on 05.11.2006 and at the time of marriage, she was given 10 sovereigns of gold and Rs.15,000/- as dowry. Post marriage,

the couple lived in Thiruvottriyur area in a rented house. The couple was blessed with a girl child, who was 1 ½ years old at the time of the incident.

2.4.It is alleged that the appellant was demanding Rs.50,000/- from his wife and was harassing her continuously. Unable to withstand his harassment, she used to come to her parental home with the child for brief spells and then return to her matrimonial home. The parents of Shajeenabi were not able to meet such a huge demand, but they gave Rs.29,000/- in three installments, viz., Rs.10,000/-, Rs.10,000/- and Rs.9,000/-, despite which, the harassment did not stop. 10 days prior to the occurrence, there was a quarrel between the couple, due to which, Shajeenabi came to her natal home and stayed with her mother (P.W.1).

2.5.In the morning of 25.04.2009, Kamroonbi (P.W.1) brought Shajeenabi and the child to the appellant's house and at that time also, a quarrel ensued between the couple, in which, it is alleged that the appellant assaulted his wife. Kamroonbi (P.W.1) mediated between them and left for her house. Around 10.00 a.m. on the same day, Shajeenabi doused herself with kerosene and set fire to herself, seeing which, the appellant tried to put off the fire and suffered minor injuries in his hands. The appellant rushed his wife to Kilpauk Medical College Hospital, where, Dr.Rajasekaran (P.W.6) examined Shajeenabi at 11.05 a.m. on 25.04.2009 and issued the copy of Accident Register (Ex.P4). Shajeenabi was admitted as in-patient in the burns ward, but, she succumbed to the injuries at 06.30 p.m. on 25.04.2009. On receiving information, the family members of Shajeenabi came to the house of the appellant.

2.6.Kamroonbi (P.W.1) lodged a written complaint (Ex.P1), based on which, Mahadevan (P.W.9), Sub-Inspector of Police, registered a case in Crime No.258 of 2009 under Section 174 Cr.P.C. on 26.04.2009 at 13.30 hours and prepared the printed F.I.R. (Ex.P8).

3.Investigation of the case was taken over by Rajaram (P.W.11), Assistant Commissioner of Police, who went to the place of occurrence and prepared Observation Mahazar (Ex.P15) and Rough Sketch (Ex.P13).

4.Since the death of Shajeenabi was within seven years of marriage, Balusamy (P.W.10), Executive Magistrate, conducted inquest and examined the family members of Shajeenabi and the appellant. The statements were marked as Ex.P10 and the inquest report was marked as Ex.P12. Balusamy (P.W.10), in his evidence as well in the inquest report (Ex.P12), has opined that the death of Shajeenabi was due to dowry harassment.

5.Based on the inquest report, the police altered the case from one under Section 174 Cr.P.C. to one under Sections 498-A and 304-B IPC vide alteration report (Ex.P14). The appellant was arrested on 27.04.2010.

6.Dr.Harish Santhaseelan (P.W.8) conducted autopsy on the body of Shajeenabi and sent the samples of the visceral organs to the Tamil Nadu Forensic Sciences Laboratory for chemical examination. The Viscera Report (Ex.P7) showed that poison was not detected in the visceral organs. After receipt of the Viscera Report (Ex.P7), Dr.Harish Santhaseelan (P.W.8) issued postmortem certificate (Ex.P6), wherein, he has stated that there was 62% burns and that the deceased would appear to have died of hypovolemic shock due to burns.

7.After examining the witnesses and collecting various reports, Kumar (P.W.12), Assistant Commissioner of Police, completed the investigation and filed a final report in P.R.C.No.29 of 2010 in the Court of XV Metropolitan Magistrate, George Town, Chennai, for the offences under Sections 498-A and 304-B IPC against the appellant.

8.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.326 of 2010 and was made over to the Mahila Court, Chennai, for trial.

9.The trial Court framed charges for the offences under Sections 498-A and 304-B IPC and an alternate charge under Section 306 IPC, against the appellant. When questioned, the appellant pleaded 'not guilty'.

10.To prove the case, the prosecution examined 12 witnesses and marked Exs.P1 to P15.

11.When the appellant was questioned under Section 313 Cr.P.C., he denied the allegations, but gave a written explanation contending that, his wife was a short-tempered person and was taking treatment for that and she would frequently threaten that she will commit suicide. However, he has not stated as to what exactly transpired between him and his wife on 25.04.2009, though he admitted his presence in the house and has also stated that he put off the flames and admitted his wife in the hospital. From the side of the appellant, one Mehaboob Basha was examined as D.W.1. No document was marked from the side of the appellant.

12.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 18.07.2013, in S.C.No.326 of 2010, acquitted the appellant of the offence under Section 304-B IPC, but convicted and sentenced him as under :

Provision under which convicted	Sentence
Section 498-A IPC	Rigorous imprisonment for three years and also a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months

Provision under which convicted	Sentence
Section 306 IPC	Rigorous imprisonment for ten years and also a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months

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

14.Heard Mr.G.Saravana Kumar, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent.

15.The prosecution has proved the following facts beyond a peradventure in this case.

- i. the inter se relationship of the parties;
- ii.the marriage of the appellant with Shajeenabi on 05.11.2006;
- iii.after marriage, a child was born to them, which was 1 ½ years old at the time of the incident;
- iv.the appellant and Shajeenabi were living in Door No.38/99, Muthaiya Maesthri Street, Old Washermenpet, Chennai;
- v. Shajeenabi had gone to her parental home with the child, a few days prior to 25.04.2009;
- vi.Shajeenabi and the child were brought to the house of the appellant by Kamroonbi (P.W.1) in the morning of 25.04.2009;
- vii.after Kamroonbi (P.W.1) left, Shajeenabi doused herself with kerosene and set fire to herself and the appellant put out the flames and admitted her to the hospital, where, she died on the same day at 06.30 p.m.

16.Now, the short question is, whether the suicide of Shajeenabi was on account of the cruelty meted out to her by the appellant.

17.Kamroonbi (P.W.1), in her evidence, has stated that her husband (P.W.2) was a cutler in Kerala; she has two sons and two daughters; Shajeenabi was given in marriage to the appellant; at the time of marriage, Rs.15,000/- was given as 'thoda' and Rs.10,000/- was given as dowry to the appellant; the appellant was residing in a rented house in Old Washermenpet, Chennai, and was an Electrician; for giving advance to the house, she gave Rs.10,000/- and Rs.9,000/- to the appellant; her daughter was never happy with the appellant and he beat her in her (P.W.1's) presence itself when she came to drop her (Shajeenabi) in the appellant's house; she pacified her daughter and left for her village; she received a phone call that her daughter had doused herself with kerosene and was admitted in the hospital; her daughter committed

suicide because of the harassment of the appellant. She further stated that she gave the complaint (Ex.P1) and also the statement to the Executive Magistrate (Ex.P2). In the cross-examination, it was suggested to her that she asked Rs.8,000/- from her daughter and since the appellant was not able to give that money, her daughter became very sad and that is why, she (Shajeenabi) committed suicide, which suggestion, she (P.W.1) denied. It was also suggested to her that her daughter was a short-tempered person and had attempted to commit suicide earlier, which suggestion also, she denied. She was recalled on 30.04.2013 and was further cross-examined by the appellant, in which, she has stated that the appellant had pledged her daughter's jewels and when her daughter asked him to redeem them, a quarrel ensued.

18. Sameer (P.W.2) has generally corroborated the evidence of Kamroonbi (P.W.1), since he did not know the problems between his daughter and his son-in-law directly, as he was in Kerala most of the times. However, he has stated that he gave Rs.10,000/- once and Rs.9,000/- on another occasion and that the appellant had pledged his daughter's jewels. He has further stated that his daughter would get angry with the appellant for not redeeming the jewels.

19. Mehaboob Basha (P.W.3), the paternal uncle of Shajeenabi, has stated that he heard from the girl's (Shajeenabi's) father that the appellant was demanding money frequently.

20. Mr. G. Saravana Kumar contended that Shajeenabi was already suffering from depression and was taking treatment for that and she was a short-tempered person and that was the reason for her to commit suicide. He also contended that, it was the appellant, who tried to save her when she committed self-immolation. He also contended that the fact that the couple had a child would, by itself, show that they were living happily.

21. Per contra, learned Government Advocate (Crl. Side) refuted the contentions.

22. In this case, though a charge under Section 304-B IPC was framed, the trial Court rightly held that there was no dowry demand, as such, by the appellant and therefore, acquitted him of that charge. However, the evidence on record shows that the appellant was frequently quarreling with his wife and that his wife would go to her parental home for solace. The appellant has admitted in his statement to the Executive Magistrate, during inquest, that he had borrowed Rs.8,000/- from his parents-in-law. The statement, as such, cannot be treated as a substantive piece of evidence, but an incriminating admission is relevant under Section 21 of the Evidence Act. Kamroonbi (P.W.1) has clearly stated that, when she dropped her daughter in the house of the appellant, he quarreled with her daughter and assaulted her. She has stated

about this event at the earliest point of time to the Executive Magistrate, vide Ex.P2. Thus, her statement given to the Executive Magistrate (Ex.P2) can be used for corroborating her testimony in the Court.

23.As regards the evidence of Mehaboob Basha (D.W.1), he has stated that, he knows the appellant for 15 years, as he used to give him wiring work and that, he also knows Shajeenabi. He has stated that the appellant would often come late for work and would say that he was late because his wife quarreled with him. The evidence of this witness (D.W.1) is clearly hearsay and he (D.W.1) does not have any direct knowledge of the marital relationship between the appellant and his wife.

24.To deal with the cases of this nature, where, things happen within the four walls of the matrimonial home, the legislature had thought it fit to create a statutory presumption by incorporating Section 113-A in the Evidence Act. Under Section 113-A *ibid.*, the Court, in a given case, may draw a presumption against the husband and his relatives that the suicide of the wife was due to their cruelty.

25.In this case, Kamroonbi (P.W.1) has stated that, on the fateful day, i.e. on 25.04.2009, she brought her daughter to the house of the appellant and in her presence itself, the appellant assaulted her daughter. After she left, Shajeenabi committed self-immolation. Though the appellant has stated in his statement under Section 313 Cr.P.C. that his wife was taking treatment for her anger, he has not even stated the name of the Doctor who was treating her. He could have easily submitted few prescriptions or any other document to probabalise this defence. That apart, he has not given any explanation as to what exactly transpired on 25.04.2009, after his mother-in-law (P.W.1) left the house. Of course, failure of an accused to give any explanation while he is questioned under Section 313 Cr.P.C. cannot, by itself, be a reason to hold him guilty. But, in this case, such a failure of the appellant is a good ground for this Court to invoke the presumption under Section 113-A of the Evidence Act, since, the suicide was within seven years of marriage and the prosecution has placed credible evidence via the testimony of Kamroonbi (P.W.1) that the appellant was demanding Rs.50,000/- and he pledged his wife's jewelry and was harassing her. Though the presumption under Section 113-A of the Evidence Act can be dislodged by the appellant by probabalising a reasonable defence, even that has not been done.

26.In view of the above discussion, the conviction of the appellant of the offences under Sections 498-A IPC and 306 IPC stands confirmed.

27.Mr.G.Saravana Kumar, learned counsel for the appellant, pleaded for some leniency in the sentence, by contending that the appellant has to take care of his

daughter, who is now 10 years old.

28. Accepting his submission, the substantive sentence of imprisonment for the offence under Section 306 IPC is reduced from 10 years rigorous imprisonment to 3 years rigorous imprisonment. Fine and default sentence shall remain the same.

In fine, this Criminal Appeal is partly allowed. The trial Court is directed to secure the appellant and commit him to prison to undergo the remaining sentence.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court, Chennai.
2. The XV Metropolitan Magistrate,
George Town, Chennai.
3. Do the Chief Metropolitan Magistrate,
Egmore, Chennai - 8.
4. The Inspector of Police,
H-1 Washermenpet Police Station,
Washermenpet,
Chennai - 600 021.
5. The Public Prosecutor,
High Court, Madras.
6. The Superintendent,
Central Prison,
Puzhal, Chennai.
7. The Section Officer |with a direction to send back the
(Criminal Section), |original records, forthwith, to the
High Court, Madras. |trial Court

+1cc to Mr.G.Saravana Kumar, Advocate, S.R.No. 12100

Cr1.A.No.501 of 2013

SV(CO)

GN(17/03/2020)

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