

BAIL SLIP

The Appellant/Accused namely 1.S.T.Sridhar, S/o.Thulasiraman, was released on bail vide this court order made in Crl.M.P.No.1/13 in Crl.A.No.70/13, dated 21.02.2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.A.No.70 of 2013

S.T.Sridhar

... Appellant

Vs.

State Represented by Assistant Commissioner of Police,
Guindy Range, Chennai - 600 032.

... Respondent

Prayer: Criminal Appeal filed under Section 374 Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 01.11.2012, passed by the Sessions Judge, Mahila Court, Chennai, in S.C.No.374 of 2006.

For Appellant :Mr.M.Kempuraj

For Respondent :Mrs. Kritika Kamal. P.

Government Advocate (Crl. 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 01.11.2012, passed by the Sessions Judge, Mahila Court, Chennai, in S.C.No.374 of 2006.

2.The prosecution story is as follows :

2.1.The deceased Kanagagowri had lost her parents and was brought up by her brother Balakrishnan (P.W.2) and his wife Ramani (P.W.1). Kanagagowri had studied upto 12th Std.

2.2.She was given in marriage to the appellant on 08.03.2004 and at the time of marriage, she was given 10 sovereigns of gold and other household articles. The appellant was running a tuition centre at the time of marriage. After marriage, Kanagagowri lived in joint family with the appellant and her parents-in-law in the Railway Quarters at Arakkonam, since her father-in-law was a railway employee.

2.3.On 27.05.2004, the appellant dropped Kanagagowri in her brother's (P.W.2's) house in Guindy, Chennai, and left

for Thirupathi on 30.05.2004.

2.4. On 01.06.2004, when Ramani (P.W.1) and Balakrishnan (P.W.2) were away from home, Kanagagowri committed suicide by hanging in her brother's (P.W.2's) house. Ramani (P.W.1) returned home and saw Kanagagowri hanging down the ceiling fan using a saree. She called her neighbours for help and the body was lowered. The appellant was also informed.

2.5. On the written complaint (Ex.P1) given by Ramani (P.W.1), Ramachandran (P.W.11), Inspector of Police, registered a case in Crime No.405 of 2004 under Section 174 Cr.P.C. and prepared the printed F.I.R. (Ex.P24).

3. Investigation of the case was taken over by Balasubramanian (P.W.12), Assistant Commissioner of Police, who went to the place of occurrence and prepared Observation Mahazar (Ex.P17) and two Rough Sketches (Exs.P18 and P19) in the presence of witnesses Manoharan (P.W.5) and Daniel Joshwa (P.W.6). From the place of occurrence, the police seized the following articles under the cover of Mahazar (Ex.P20) :

- i. a 16 pages suicide note (Ex.P2)
- ii. a letter dated 01.06.2004 written by Kanagagowri to the Director of IIT (Ex.P3)
- iii. a Physiology practicals record book (Ex.P11)
- iv. a Botany record book containing the writings of Kanagagowri in Tamil and English (Ex.P12)

4. Since the death of Kanagagowri was within seven years of marriage, Ramakrishnan (P.W.9), Tahsildar, conducted inquest over the body of the deceased and examined the witnesses, including the appellant herein. Based on the inquest, Anbarasu (P.W.10), Personal Assistant to the District Collector, gave his opinion (Ex.P16) stating that the death of Kanagagowri was not due to dowry harassment. However, a reading of the suicide note showed that she had suffered cruelty and therefore, the Investigating Officer altered the case from one under Section 174 Cr.P.C. to one under Sections 498-A and 306 IPC vide alteration report (Ex.P21).

5. Dr. Shanmugam (P.W.7) performed autopsy on the body of Kanagagowri and in his evidence, as well in the postmortem certificate (Ex.P10), has opined that the deceased would appear to have died of Asphyxia due to hanging.

6. The seized suicide note (Ex.P2) was sent through the IX Metropolitan Magistrate, Chennai, to the Tamil Nadu Forensic Science Department, for expert opinion, along with the admitted writings of Kanagagowri. George (P.W.8), the Handwriting Expert in the Tamil Nadu Forensic Science Department, in his evidence as well in the report (Ex.P13), has stated as follows :

"The person who wrote the red enclosed signature and writings stamped and marked S1 to S27, S14A &

S15A also wrote the red enclosed signature and writings, similarly stamped and marked Q1 to Q18."

7.The appellant was arrested on 20.06.2004. After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.170 of 2005 before the IX Metropolitan Magistrate, George Town, Chennai, for the offences under Sections 498-A and 306 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.374 of 2006 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 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 P24 and four Material Objects.

11.When the appellant was questioned under Section 313 Cr.P.C., he denied the allegations. From the side of the appellant, two witnesses, Sampath (D.W.1) and Govindapillai (D.W.2) were examined and no document was marked.

12.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 01.11.2012, in S.C.No.374 of 2006, convicted and sentenced the appellant 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
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.M.Kempuraj, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent.

15.Ramani (P.W.1) and her husband Balakrishnan (P.W.2) have, in their evidence, stated that Kanagagowri was given in marriage to the appellant; at the time of marriage, the appellant was running a tuition centre; after marriage, the couple lived in joint family; on 27.05.2004, the appellant brought Kanagagowri to their house and left her; Kanagagowri appeared very sad; when the appellant was asked as to why he is not taking his wife anywhere out, he told them that he is not in the habit of going out anywhere; the appellant left after staying for a day; two days later, when they both were away from the house, Kanagagowri committed suicide by hanging. The evidence of these witnesses (P.Ws.1 and 2) did not throw much light on the alleged cruelty inflicted by the appellant.

16.The whole prosecution case rests on the 16 page suicide note (Ex.P2), that was left by Kanagagowri.

17.George (P.W.8), the Handwriting Expert, in his evidence, has stated that he examined the suicide note (Ex.P2) and compared it with the admitted writings of Kanagagowri, found in the letter written by her to the Director of IIT and in her record note books (Exs.P3, P11 and P12), and gave reasons for concluding that the suicide note was written by the person who had written Exs.P3, P11 and P12. In the cross-examination, the defence have taken a stand that the suicide note was a planted one, though the averments in the suicide note substantially favoured the defence. The appellant examined his relatives, Sampath as D.W.1 and Govindapillai as D.W.2 in order to show that he was having a cordial relationship with his wife. However, in the cross-examination of Sampath (D.W.1), he has stated that, he was living 40 km away and that, he does not know the personal relationship between the appellant and his wife.

18.A complete reading of the suicide note shows that the appellant was suffering from mental depression and frequent hallucination. The suicide note (Ex.P2), which is in Tamil, runs to 16 pages, and hence, only the excerpts, translated into English, are given below :

"He was not a normal person. He will always complain of leg pain, back pain and will keep applying oil for these pains. While sleeping in the night, he will keep blabbering irrelevant things. He would also have loss of memory and would frequently forget as to where he is. Once, he went to the toilet and forgot that he was in the toilet and I went and brought him out. He does not have a steady mind. While sleeping, he will bang the person lying next to him and start weeping. Once, he went to Perambur with Rs.1000/- in his pocket, spent all the money, got into the bus, and then realised that he did not have any money for buying

ticket.

He used to consume "Musox Complifide" and composes frequently. Once, my periods skipped and so, I was feeling very uneasy. When I wanted to go to a Doctor, he took me to a male Doctor, even without realising that I need to be taken to a female Doctor. The Doctor gave some medicines. I came home and kept hot water for taking the medicine. At that time, he called me out. Since the water was boiling, I did not go immediately, for which, he thrashed me. 26.03.2004 was my birthday. He went to buy cake. I locked the door from inside and was wearing my saree. He returned home and I delayed in opening the door, for which, he thrashed me. Once, he told me that he is hearing voices of Prime Minister Manmohan Singh and Narasimha Rao and said that they will come to our house. In the presence of others, he will act as if he is a perfectly normal person. I took him to hospital and the Doctor asked him to take CT Scan of the brain. We returned home and in the night, he thrashed me, tried to pluck my eyes, pressed my mouth tightly and created a ruckus.

The suicide note goes on and goes forth and ultimately, she has stated that, it is no more possible for her to live with the person and the only way to escape is suicide and it is further stated that the atmosphere was not congenial in her matrimonial home to commit suicide and that is why, she is committing it in her brother's house.

19.As alluded to above, the appellant could have made best use of this suicide note (Ex.P2) and turned the case in his favour, instead, he repudiated the suicide note (Ex.P2) and set up a theory that his wife was suffering from depression and that is why, she committed suicide. The appellant also did not chose to defend himself under Chapter XXV of the Code of Criminal Procedure.

20.Now, the question is, was the appellant unsound in mind at the time of the incident. The answer to this question is an emphatic "No". The appellant was not mentally unsound, because, he was taking tuition and according to his own witnesses, he even got employment in the Railways. Of course, the appellant had not set up a defence of insanity rightly, as his mental condition was not so. What he was suffering was, bouts of depression and hallucination. The appellant had sufficient mental capability to acknowledge the fact that he required treatment and should have gracefully submitted himself to the treatment by a Psychiatrist, when his wife took him to the hospital for treatment. Instead of that, he came home and thrashed his wife inhumanly, which would clearly attract the provisions of Section 498-A IPC. In the opinion

of this Court, the evidence on record is insufficient to convict the appellant of the offence under Section 306 IPC, albeit the presumption under Section 113-A of the Evidence Act.

21. In view of the above discussion, the conviction and sentence qua Section 306 IPC are set aside and the conviction of the appellant of the offence under Section 498-A IPC is confirmed.

22. Mr. M. Kempraj, learned counsel for the appellant, pleaded for some leniency in the sentence. This Court is of the view that interest of justice would be served if the sentence is reduced from three years rigorous imprisonment to 18 months rigorous imprisonment.

23. In fine, this Criminal Appeal is partly allowed. The appellant is acquitted of the offence under Section 306 IPC and the conviction qua Section 498-A IPC is confirmed, but the sentence is reduced from three years rigorous imprisonment to 18 months rigorous imprisonment.

The trial Court is directed to secure the appellant and commit him to prison to undergo the remaining sentence. The appellant will be entitled to set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mnk

To

1. The Sessions Judge,
Mahila Court,
Chennai.

2. The Assistant Commissioner of Police,
Guindy Range,
Chennai - 600 032.

3. The Public Prosecutor,
High Court, Madras.

4. The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, forthwith, to the
High Court, Madras. | trial Court

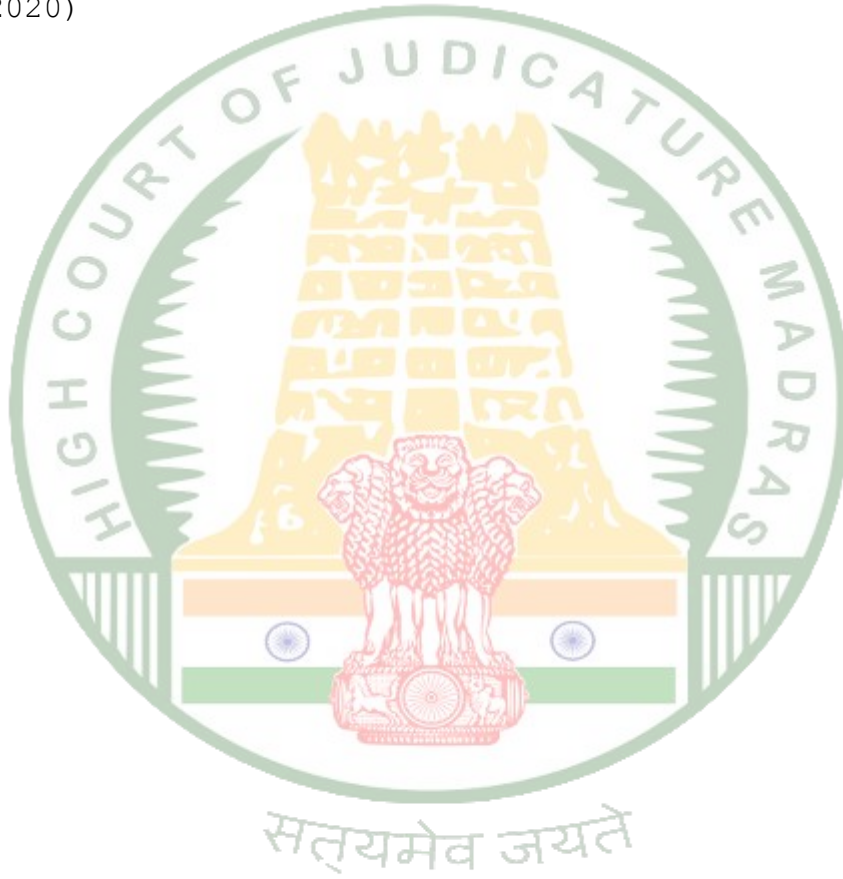
5.IX Metropolitan Magistrate,
Saidapet, Chennai.

6.The Chief Metropolitan Magistrate,
Egmore, Chennai.

7.The Superintendent
Central Prison, Puzhal, Chennai.

Cr1.A.No.70 of 2013

RSV(CO)
CB(26/05/2020)



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