



BAIL SLIP

The Appellant/Accused namely S.Senthil Kumar @ Gunasekaran, S/o.Sivasamy Gounder, was directed to be released on bail as per the order of this Court, dated 03/06/2016 in M.P.No.1 of 2015 in CRL.A.No.389 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 26.08.2021]

[JUDGMENT PRONOUNCED ON : 27.10.2021]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.A.NO.389 OF 2015

S.Senthil Kumar @ Gunasekaran

... Appellant/Accused

.Vs.

The State through,  
The Inspector of Police,  
Kinathukadavu Police Station,  
Coimbatore District.  
(Crime No.608 of 2011)

... Respondent

PRAYER:-

Petition filed under Section 374 (2) of Cr.P.C, to call for the records in S.C.No.158 of 2013 on the file of the learned Sessions Judge, Mahila Court at Coimbatore allow the appeal, set aside the judgment and order of conviction dated 27.05.2015 and acquit the appellant.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.R.Vinoth Raja  
Government Advocate  
(Crl. Side)



## JUDGMENT

The convicted sole accused is the appellant herein.

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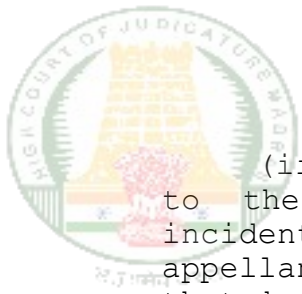
2. This Criminal Appeal is filed under Section 374(2) Cr.P.C against the judgment of the learned Sessions Judge Mahila Court at Coimbatore dated 27.05.2015 in S.C.No.158 of 2013 finding the appellant guilty for offences under Section 498-A and 306 and convicting and sentencing the appellant under Section 235 (2) Cr.P.C to undergo Rigorous Imprisonment for 7 years and also fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment for offence under Section 306 and further directing the sentences to run concurrently and set off under Section 428 Cr.P.C.

3. The case of the prosecution in brief is that the accused and the deceased are husband and wife and having two children and the accused was doing self business and used to scold his wife now and then and 10 days prior to 22.04.2011, the accused has married as a solemnization second marriage with one Poongodi who is a residing of Kothampadi, Erode District. In this connection, the same was questioned by the wife (deceased sumathi) for which, the accused has uttered filthy language and uttered "நீ செத்துத் தொலைந்தால்தான் எனக்கு நிம்மதி, சாவுடி" (I will get piece only if, you die), and unable to bare the such utterance of words on 22.04.2011 at about 1.30 noon, she committed suicide in the bathroom of her house in Door No.2/38, Kodangipalayam by self-emolusion and subsequently, she was admitted on Government Hospital and died on 23.04.2011.

4. The suggestive case of the defence is that the quarrel between the husband and wife are in the normal petulance of the family life and no such allegations or solemnization of any second marriage as projected by the prosecution and 10 days before the incident. In the newspaper, it is published that the deceased (wife sumathi) along with one Appu was remanded in a case under NDPS Act and granted bail wherein, they have not shown as living together in the very same address and that is the cause of the quarrel between the husband and wife and has not stated as projected by the prosecution.

5. The respondent police filed a charge sheet against the accused in Crime No.608 of 2011 alleging that:

(i) On 22.04.2011 when the respondent police was on duty his special Sub-Inspector had received a statement from one Sumathi who was admitted with burn injuries in ward at Coimbatore Government Medical College Hospital.



(ii) As per the statement, the victim Sumathi, was married to the appellant before 15 years from the date of the incident/occurrence. Further from the date of the marriage, the appellant will not be coming home for 10 to 15 days by stating that he is doing silk (sarees) business. When this issues were raised to the accused by his wife (victim Sumathi) the appellant has started harassing and fighting with his wife.

(iii) Later, the deceased Sumathi came to know that the appellant got married with one Poongodi who is a residing of Kothampadi, Erode District as a second wife. While this is so on 22.04.2011 at about 10.00 a.m. When the appellant was in house the victim Sumathi again raised this issue which resulted in a wordy quarrel between them and the appellant had uttered filthy language and had beaten the victim.

(iv) On the same day at about 1.30 p.m the victim Sumathi poured kerosene on her whole body and had lit a matchstick and get herself on fire inside the bathroom by locking the door of her house.

(v) Further one Kathiravan friend of the appellant had rescued the victim and she was admitted in the Coimbatore Government Medical College Hospital in an emergency situation battling for her life after sustaining burn injury behind the body.

(vi) After battling for life, she had succumbed to the burn injuries on 23.04.2011. Hence, the respondent had filed the charge sheet against the appellant/accused for the offence punishable under Section 498-A and 306 I.P.C on 03.01.2012 and the charges were framed against the accused for offences under Section 498-A and 306 I.P.C.

6. To prove the case against the accused, the prosecution had examined 8 witnesses as P.W.1 to P.W.8 and marked exhibits as Exs.P1 to P11 and produced 1 material object marked as M.O.1. The accused had examined two witnesses on his side as D.W.1 and D.W.2, and no documents have been marked in defence.

7. After trial, the learned Sessions Judge (Mahila Court) at Coimbatore had convicted and sentenced as stated supra.

8. The learned counsel for the convicted accused/appellant has raised following points:-

(i) In this case, AR recorded by Doctor at her admission to Government Hospital should be treated as first dying declaration;



(ii) the second dying declaration is said to be the complaint given during the treatment of the victim (since died)

(iii) the statement given by the deceased prior to her death to the learned Judicial Magistrate was marked as Ex.P6. However, AR copy was not produced nor marked. The dying declaration was not proved in the manner known to law and suffers irregularity and relied upon the judgment reported in Ekambaram Vs. Vethachalam and others in 1996 (1) LW Criminal 222

(iv) The contention of the appellant counsel is that the main grievance of the deceased is that the accused has married one Poongodi. Merely because a person has solemnized the second marriage that could not be said to have abetted or induced, the wife to commit suicide. Also, relied on the elicited during the cross-examination of PW2/mother of the deceased, where admitted the deceased was arrested in NDPS case in connection with the supply of Ganja along with one Appu @ who was detained under the Goondas Act and the quarrel was only this connection and not otherwise.

9. The learned counsel for the appellant also relied upon the evidence of D.W.1 and D.W.2, who are the sons of the deceased and the accused, which is to the effect that there was no abetment or inducement to commit suicide.

10. The learned Government Advocate (Crl.Side) has made submission in support of the judgment of the Session Court.

11. Reliance is placed by the learned counsel for the appellant that a mere fact of performance of second marriage or extra marital affair is not falls under Section 306 since the same does not amount to abatement of suicide by relying upon 2019 (3) SCC Crl.69 [Wasim Vs.State (NCT of Delhi)]

12. Heard the rival submissions and perusing the documentary evidence placed before the Sessions Court.

13. P.W.1 Raj is the brother of the deceased who convicted who are person at the time of recording by oral complaint by the Inspector of Police Exs.P1 and P2. P.W.2 is the mother of the deceased. P.W.3 and P.W.4 attester of Ex.P7 Observation Mahazar have turned hostile. P.W.5 is the Inspector of Police deposed regarding receipt of Ex.P1 and obtaining the signature of P.W.1 and registration of Ex.P3 F.I.R. P.W.6 is the Doctor who was conducted the Post-mortem Report and gave the opinion under Ex.P4 and final opinion is Ex.P5. P.W.7 judicial magistrate who had recorded the dying declaration of the deceased and marked Ex.P6 dying declaration recorded by him. P.W.8 is a Investigation Officer deposed regarding discharge of his





were Ex.P1 was came into existence. P.W.1 is a only hearsay witness. He does not know about the occurrence even as alleged by the prosecution. The another person who said to have been present, on that day in the scene of the crime (viz., house of the accused) is two sons who are examined as D.W.1 and D.W.2 and going by the witnesses available on record. It is the deceased accused and Kathiravan and two sons D.W.1 and D.W.2 are available on that day in the house of the accused. When the deceased alleged to have poured kerosene on her body and went to the bathroom to her house.

20. As stated supra, in the Ex.P6 Dying Declaration there is a lot of infirmity with regard to the name of the husband, family member of the alleged second wife and also the the cell number said to have been stated by the deceased. Since, it is in the description of Dying Declaration, I am not expressing any opinion except to say that the name of the accused viz., the name of the husband of the deceased is found to be at vital variation in more than 3 places. Furthermore, as per the dying declaration, the appellant/accused and one Poongothai with whom, the appellant has alleged to have had illicit relationship was arrayed as accused No.2. Subsequently, the respondent police conducted a complete investigation and after recording the statement from the witnesses have deleted the said Poongothai in the charge sheet saying that she was noway connected with the said offence.

21. As pointed out by the appellant counsel there is improvement in the statement recorded under Ex.P1 complaint and Ex.P6 dying declaration.

22. yet another point is that though a cell phone number was said to have been told by the deceased in Ex.P6 dying declaration, no steps have been taken by police as to owner of the cell number was not identified by the Investigation Officer has admitted in his cross examination :-

"சுமதி மருத்துவமனையில் சேர்ந்ததற்கான விபத்து பதிவேடு நகலை நீதிமன்றத்தில் தாக்கல் செய்யவில்லை. மரண வாக்குமூலத்தில் ஒரு கைப்பேசி எண் குறித்து விவரம் உள்ளது. அந்த எண்ணுக்கு சொந்தக்காரர் யார் என்று நான் புலன் விசாரணை மேற்கொள்ளவில்லை."

23. Admittedly, the cell number mentioned in the dying declaration-Ex.P6 was not identified as to whom it belongs to though the Investigation Officer claimed that he had collected the call details that came to the deceased cell number, however, for the reasons not known, he not chosen to file the same and consequently it was not marked before the trial Court. Had there been any phone call from the said cell number to the cell number



of the deceased as projected by the prosecution, there could be no impediment for the prosecution to file the call details that was said to have been collected by the Investigation Officer.

24. This Court is conscious of the fact that the statement in the dying declaration does not require corroboration, if inspire of the confidence of the Court. As stated supra, Ex.P6 dying declaration is full of infirmity. At 3 places, the name of the accused namely, the husband of the deceased was different. At one place, the name of the accused was mentioned as Gunasekaran. In more than two places, it is mentioned in Ex.P6 that the said Gunasekaran is wife of one Poongothai absolutely there is no any positive evidence much less any evidence to link that the name Gunasekaran (as mentioned in Ex.P6) is that of the accused. At this juncture, even under F.I.R, the name of the accused was mentioned only as a Senthilkumar which is based upon Ex.P1 complaint. However, for the reasons best known, the name has been described as Senthilkumar alias Gunasekaran in the final report so also in the judgment. The Investigation Officer has not filed any memo for adding a alias name. These factors, though not singly by itself but on an cumulative reading lapse and laccuna in records, comes serious doubt as to the alleged involvement of accused as projected by the police.

25. Be that as it may. As pointed out, there are lot of infirmity in Ex.P6 dying declaration which is said to have been given by the deceased to the learned Judicial Magistrate P.W.6. It is not only the name of the husband of the deceased but also he was described as husband of some one else. The person who said to have been called over phone from the cell number mentioned therein, it has not tally with the name of the accused also assumes significance.

26. At this juncture, the evidence of D.W.1 and D.W.2 which lends of support of the suggestive case of the prosecution. As stated supra, on the fateful day the accused and the deceased and one Kathiravan along with D.W.1 and D.W.2 were present in the home. It is a specific evidence of D.W.1 and D.W.2 that the mother namely the deceased have entertained suspicion that her husband (the accused) is having illicit relationship with some one and with this suspicion in mind she had fought with accused and there is no whisper regarding any abatement to suicide as projected by the prosecution. Thus, this Court finds that wife of Senthilkumar died due to the suicide by self-emmaulation at bathroom of his house.

27. Hence in view of the infirmities contained in Ex.P6 and in view of the non failing of the Accident Register which is admittedly available in the Coimbatore Medical College at the time of the admission by the deceased and non-examination of



28. The deceased would appear to have died of BURNS the Viscera doesnot any poison.

30. The finding rendered by the learned Sessions Judge at paragraph that the evidence of D.W.1 and D.W.2 support the prosecution is nothing but perverse what was recorded by the sessions judge at this paragraph is not found in any wherein evidence of the D.W.1 and hence, the finding by the learned sessions judge is hereby vacated.

32. Hence, in this view of the matter the conviction and sentence passed under Section 306 I.P.C is hereby set aside.

34. Taking note of the fact that the quarrel has picked up by the wife as spoken to by D.W.1 and D.W.2, sons of the deceased and the accused in connection with the suspicious character, there was a quarrel and she committed suicide and hence in view of the answer elicited in the cross-examination of P.W.2 and even as per the suggestive case of the defence that



due to the said publication of the factum of previous conduct of the accused, being arrested in the NDPS case and remanded with co-accused Appu and both of them were granted bail by showing that they were living together in the very same address and thereafter on coming to know about the past history of co-habitation between the deceased and the other co-accused in NDPS case there was a quarrel. There was heated exchange of words resulted in wife committed the suicide. Hence, I find that the charge under Section 498-A is proved in the manner known to law. since the trial Court has not granted any separate sentence as he chosen to give sentence only for 306 which was set aside, for the reasons stated in the preceding paragraphs. This Court taking note of the answer and reply given at the time of questioning on sentence of the accused by the Sessions Judge. The learned counsel for the appellant could contend that the appellant was already in jail for more than one year and hence the period of sentence already undergone by the accused in jail is treated as a sentence for the charge under Section 498-A.

35. In the result,

(i) This Criminal Appeal is allowed.

(ii) The order of conviction passed by the learned Sessions Judge, Mahila Court, Coimbatore in S.C.No.138 of 2016 for the charge under Section 306 I.P.C is hereby set aside.

(iii) However, the conviction for charge under Section 498 (A) I.P.C is hereby sustained and the sentence for the charge under Section 306 I.P.C is set aside.

(iv) While since no separate sentence was passed by the Sessions Judge and hence the sentence under Section 498 (A) I.P.C is awarded to the period already undergone.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,  
Mahila Court at Coimbatore.



2. The Inspector of Police,  
Kinathukadavu Police Station,  
Coimbatore District.

3. The Public Prosecutor,  
High Court, Madras.

4. The Superintendent,  
Central Prison,  
Coimbatore.

5. The Section Officer,  
Criminal Section (Records),  
High Court, Madras.

CRL.A.NO.389 OF 2015

BR(CO)  
PBS/17/11/2021