

Bail Slip

The Appellant herein / Sole Accused namely Ravikumar, S/o. Ramasamy, was directed to be released on bail as per order of this court dated 23.11.2007 and made in M.P.No.1 of 2007 in CrI.A.No.1047 of 2007 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-07-2015

CORAM

THE HON'BLE MR.JUSTICE P.DEVADASS

CrI.A.No.1047 of 2007

Ravikumar

...Appellant

-vs-

The Inspector of Police,
Pennadam Police Station,
Cuddalore District
In Crime No.64 of 2004

...Respondent

This Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the JUDGMENT passed in S.C.No.543 of 2006 on 26.10.2007 by the learned Sessions Judge, (Mahila Court), Cuddalore.

For Appellant : Mr.M.C.Swamy

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

J U D G M E N T

The sole accused in the Sessions Case in S.C.No.543 of 2006 on the file of the learned Additional Sessions Judge, Mahila Court, Cuddalore is the appellant.

2. He was accused of having subjected his wife Sangeetha to cruelty and dowry torture and as a result of that, she has committed suicide.

3. In the Trial Court, he has been tried for charges under Sections 498-A and 304-B IPC.

4. Appreciating the evidence, the Trial Court acquitted him from the charge under Section 304-B IPC, however, found him guilty under Section 498-A IPC and sentenced him to 2 years RI and fined him Rs.10,000/-, in default, 3 months RI.

5. The case of the prosecution runs as under:

(i) PW-1, Samidurai, is the father of deceased Sangeetha and PWs-2 and 3, Thirunavukkarasu and Kumar are her brothers;

(ii) On 8.6.2000, Sangeetha was married to the appellant. Quarrel arose between both. Sangeetha came to her parents house. In this connection, Sangeetha gave Ex.P-18 complaint to PW-18, Reeta, Inspector of Police, All Women Police Station, Chidambaram. PW-19, Rajendran, Inspector of Police, Pennadam investigated the same. It was compromised. Accused agreed to live with his wife (Ex.P-21). Sangeetha not pressed her complaint (Ex.P-20);

(iii) PW-3 Kumar's marriage took place. He was given a TVS-50 Moped by the girl's family. In the circumstances, accused demanded a similar Moped from Sangeetha's family. PW-1 agreed to give it, but it took sometime;

(iv) On 18.4.2004, at about 8 p.m., Sangeetha came home late from a marriage function. Accused questioned her. Quarrel arose between both. Accused had beaten her. She swooned on the road. Persons nearby rescued her. Gave her soda. She regained her conscience. On the next day, at about 6 a.m., in her matrimonial home, Sangeetha hanged herself.

(v) On 10.4.2004, at about 12.30 noon, at the Pennadam Police Station, PW-1 gave Ex.P-1 complaint to PW-16, Karunanithi, Head Constable. He registered this case in Crime No.64 of 2004 under Section 174(3) Cr.P.C. (Ex.P-12 printed FIR);

(vi) On receipt of a copy of the FIR, PW-19, Rajendran, Inspector, Pennadam Police Station, took up his investigation. He visited the scene place. Prepared Ex.P-13, observation magazar in the presence of PWs-10 and 11, Ganesan and Periyasamy. He drew Ex.P-14 rough sketch. In their presence, he seized MO-2 saree. He also examined the witnesses and recorded their statement;

(vii) PW-15, Velappan, R.D.O., Vridhachalam conducted inquest over the dead body of Sangeetha. He conducted enquiry. He gave Ex.P-11 report to the effect that she died because of the beatings of the accused. In the circumstances, PW-19 altered the

section of law to Sections 498-A and 304-B IPC and submitted Ex.P-16 alteration report to the Court. PW-13, Dr.Kalaiselvam conducted autopsy on the dead body of Sangeetha. He confirmed she having committed suicide (Ex.P-9 Post-mortem Report);

(viii) PW-19 arrested the accused. He send him to Court for judicial custody, produced the case property under Form 95 (Exs.P-17 and P-18). After him, PW-21, Sundar Rajan, Inspector continued the investigation. He perused the case-records and concluding the investigation, he filed the Final Report in the Court as against the accused for offences under Sections 498-A and 304-B IPC.

6. Upon hearing both and on consideration of the Final Report and the documents attached thereto, the Trial Court framed charges under Sections 498-A and 304-B IPC as against the accused. He pleaded not guilty to the charges.

7. To substantiate the charges, PWs-1 to 21 were examined, Exs.P-1 to P-21 were marked and MOs-1 to 3 were exhibited.

8. Appreciating the said evidence and the arguments of both sides, the Trial Court acquitted the accused from the charge under Section 304-B IPC, however, convicted and sentenced him under Section 498-A IPC as stated already.

9. According to the learned counsel for the appellant, the charge under Section 498-A IPC has not been established by the prosecution beyond all reasonable doubts. Torture and mental cruelty must be persistent and constant. There must be proximity to the offence alleged and its period. In this connection, learned counsel for the appellant cited in Manju Ram Kalita vs. State of Assam {(2009) 13 SCC 330} and Kantilal Martaji Pandor vs. State of Gujarat {(2013) 8 SCC 781}. However, in the case before us, the event which took place in 2000 is sought to be projected against the accused in connection with certain alleged events took place on 18.4.2004.

10. Learned counsel for the appellant further submitted that dowry allegation has not been made in the FIR. In the course of their evidence, PWs-1 to 3 and 7 and 8 made improvements, introduced dowry allegation. There is no evidence to show that on the night of 18.4.2004, appellant has shabbily treated his wife and beaten her, except the hearsay evidence of PWs-1 to 3 and 7. Further, in this regard, the evidence of PWs-4 and 5 is also not clear and specific.

11. The learned counsel for the appellant also contended that on 19.4.2004, PW-7 is stated to have received a phone call from Sangeetha to her Uncle's house, however, PW-2 had stated that on that

day, they did not receive any phone call from Sangeetha. So PW-7 is not trustworthy.

12. Learned counsel for the appellant further contended that as per the prosecution version, the occurrence took place on the night of 18.4.2004, however, the I.O. PW-19 candidly admitted that the investigation revealed that such an event took place only at 3 p.m. Thus, the prosecution witnesses are unworthy of credit.

13. Learned counsel for the appellant also submitted that prosecution witnesses admitted that there used to be petty quarrel between the spouses. Such kind of ordinary quarrel between the spouses in their day-to-day life will not amount to cruelty, mental or physical.

14. On the other hand, the learned Additional Public Prosecutor submitted that evidence, oral and documentary clearly established that the appellant used to harass and cruelly treat his wife both for dowry and also suspecting her fidelity. Her relatives who have occasion to know their family affairs, have spoken about this in extenso in their evidence. One day prior to the incident, accused had treated his wife very badly, beaten her, she swooned on the road, she was rescued. Under these circumstances, unable to bear the cruelty, on the next day, she committed suicide. In the circumstances, the Trial Court has rightly convicted the appellant under Section 498-A and punished him accordingly.

15. I have anxiously considered the rival submissions, perused the materials on record, the impugned judgment and the decisions cited by the learned counsel for the appellant.

16. Now the question is whether the charge under Section 498-A IPC framed as against the appellant has been proved by the prosecution beyond all reasonable doubts.

17. Originally, in the Indian Penal Code, Section 498-A IPC is not there. In view of the increasing violence against women, it was felt that a provision like Section 498-A IPC is required to be included in the Code. That is how such a provision has been inserted in the Indian Penal Code.

18. Section 498-A IPC runs as under:-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall

be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purposes of this Section, 'cruelty' means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

19. It will be clear from the language of Section 498-A IPC, that if an husband or his relatives subjects his wife to cruelty, he shall be punished with imprisonment upto 3 years and also liable for fine. The Explanation to Section 498-A IPC defines "cruelty". It means any of the acts mentioned in clause (a) or clause (b).

20. In Manju Ram Kalita vs. State of Assam {2009 (13) SCC 330}, in paragraph Nos.14, 15 and 18, the Hon'ble Supreme Court observed as follows:-

"The elements of cruelty so far as clause (a) is concerned, have been classified as follows:-

(i) any "wilful" conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any "wilful" conduct which is likely to cause grave injury to the woman; or

(iii) any "wilful" act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

15. In S.Hanumantha Rao vs. S.Ramani {(1999) 3 SCC 620 : AIR 1999 SC 1318}, this Court considered the meaning of cruelty in the context of the provisions under Section 13 of the Hindu Marriage Act, 1955 and observed that: (SCC p.624, para 8)

"8. ... Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the

bond between the wife and the husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party."

18. In *Raj Rani vs. State* (Delhi Administration) {(2000) 10 SCC 662 : 2001 SCC (Cri) 1518 : AIR 2000 SC 3559}, this Court held that while considering the case of cruelty in the context of the provisions of Section 498-A IPC, the Court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt."

21. 'Cruelty' is a condemnable act. For the purpose of Section 498-A IPC, cruelty relates to physical cruelty and mental cruelty. It will be an unbearable conduct affecting a woman or a person interested in her physically and mentally. But all vague acts or ordinary disputes between the spouses in their routine life cannot be passed as cruelty.

22. Now, in this case, it is alleged that prior to 26.3.2002 the accused suspecting the fidelity of his wife Sangeetha mentally harassed her and it is also alleged that on 18.4.2004, at about 8 p.m., since she came home late from a marriage function, the accused scolded her, beaten her, she fell on the street and neighbours rescued her.

23. The evidence of PWS-1 to 3 and 7 clearly shows that accused and Sangeetha used to quarrel very often. They have become fighting couples. Under such circumstances, in 2002, Sangeetha gave Ex.P-19 complaint to All Women Police Station, Vridhachalam and the spouses were enquired. The accused agreed to live with his wife peacefully, while Sangeetha has not pressed her complaint (Exs.P-20 and P-21). Accordingly, further action was dropped.

24. The accused is alleged to have beaten his wife on 18.4.2004. The cruelty mentioned in Section 498-A IPC must be continuous and constant. There must be proximity as to the alleged occurrence and the period.

25. In *Manju Ram Kalita* (supra), in paragraph 17, the Hon'ble Supreme Court observed as follows:-

"17. In *Mohd. Hoshan vs. State of A.P.*

{(2002) 7 SCC 414 : 2002 SCC (Cri) 1765}, this Court while dealing with the similar issue held that mental or physical torture should be continuously practised by the accused on the wife. The Court further observed as under: (SCC p.418, para 6):

"6. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."

26. One cannot dig the past, one cannot project the old compromised matter to rope in the husband that he has harassed his wife. As the matter prior to 2002 was already over that cannot be a basis for the present case and that cannot be included in the charge.

27. PWs-1 to 3 have stated that when PW-3 was given a TVS 50 Moped by his in-laws, the greediness in the accused arose and he demanded similar Moped from Sangeetha's family and PWs-1, 2 and 3 have stated that the accused has subjected Sangeetha to dowry torture.

28. No such allegation in the FIR nor such a statement was made by PWs-1 to 3 before PW-15, Revenue Divisional Officer. Thus, this allegation has been developed by the witnesses when they have entered the witness box.

29. The other imputation as against the accused is that on 18.4.2004, the accused and Sangeetha attended a marriage function, accused came home early, however, Sangeetha came around 8 p.m., accused got wild, beaten her severely.

30. As regards this aspect, PWs-1 to 3 have spoken elaborately in their evidence. However, in their cross-examination, they have fairly admitted that they have not witnessed the said incident, they were told about this by the neighbours. Thus, their evidence is hearsay.

31. To establish the alleged event on 18.4.2004, prosecution placed much hope on PWs-4 and 5, Anjalai and Parvathy. They are neighbours. PW-4 is residing next to Sangeetha's house, while PW-5 is residing just opposite to Sangeetha's house. Though in her chief-examination, PW-4 had stated that when Sangeetha came home late on that day, the accused has scolded her. In her cross-examination, she completely pleaded ignorance about this incident. Even PW-5's evidence in this regard is only hearsay. Her evidence in the cross-examination make the prosecution case still worse. Thus, the evidence of PWs-4 and 5 does not supply any incriminating information as against the appellant.

32. PW-7, Kalaiselvi is wife of PW-2, Thirunavukkarasu, a brother of deceased Sangeetha. According to PW-7, on the fateful day, she received a phone call from Sangeetha to her uncle's house which is nearby, she attended the phone call, Sangeetha wept and told her that the accused had harassed her, she is carrying 4 months, he did not take her to hospital also. However, PW-8, Ravi, in his evidence stated that on that day, they did not receive any phone call from Sangeetha.

33. The prosecution version is that on 18.4.2004, at about 8 p.m., the incident in which the accused having beaten Sangeetha took place. However, the Investigation Officer PW-19, Rajendran stated that his investigation revealed that the said incident took place around 3 p.m.

34. Considering all the above aspects, I am of the view that the prosecution has not established the charge under Section 498-A IPC as against the appellant beyond all reasonable doubts. Thus, he is entitled to the benefit of doubts.

35. In view of the foregoing, this Criminal Appeal is allowed. The conviction recorded under Section 498-A IPC and the sentence awarded by the learned Additional Sessions Judge, Mahila Court, Cuddalore in S.C.No.543 of 2006 on 26.10.2007 are set aside. The appellant is acquitted. Fine amount, if paid, shall be refunded to the appellant. Bail bond shall stand cancelled.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Principal Sessions Judge,
Cuddalore.

2.The Additional Sessions Judge,
Mahila Court, Cuddalore.

3.The Superintendent,
Central Prison, Cuddalore.

4.The Public Prosecutor,
High Court, Madras.

5.The Inspector of Police,
All Women Police Station,
Chidambaram.

6.The Inspector of Police,
Pennadam Police Station,
Cuddalore District.

7.The District Munsif cum Judicial Magistrate,
Tittagudi.

8.-Do- Through The Chief Judicial Magistrate,
Cuddalore.

9.The Section Officer,
Criminal Section, High Court,
Madras - 104.

1 CC to M/s. S.Senthilsamy Associates, Advocate SR.No. 36896

CrI.A.No.1047 of 2007

MSM (CO)
PSI (28.07.2015)

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