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Bail Slip

The Appellant/Accused Viz., Adaikalaraj, was directed to be released on bail in and by the order of this court dated 10.1.2007 made in M.P.No.1/2007 in CrI.A.No.35 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.35 of 2007

Adaikalaraj

... Appellant/Accused-1

vs.

State represented by
Deputy Superintendent of Police
Perambalur Division
Perambalur District
(Kaikalathur Police Station
Cr.No.158/2003)

...Respondent

Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973 against the judgment in S.C.No.47/2006 on the file of Sessions Judge, Mahila Court, Perambalur, dated 20.12.2006.

For appellant : Mr.S.Kamadevan

For respondent : Mr.P.Govindarajan, Addl.Public Prosecutor

JUDGMENT

Challenge in this Criminal Appeal is to the convictions and sentences dated 20.12.2006 passed in Sessions Case No.47/2006 by the District and Sessions Court, Mahila Court, Perambalur.

2. The case of the prosecution is that the first accused is the husband of the deceased Mookkayee; the accused 2 and 3 are the parents of the 1st accused. Prior to one year from 19.11.2003, the first accused has married the deceased Mookkayee and after the marriage, both of them has lived as husband and wife in the house of



the accused. All the accused have joined together and demanded dowry from the deceased in the form of jewels, cow and other articles. Since the deceased Mukkayee has not been able to brook the demand made by all the accused, she committed suicide. After occurrence, the concerned Village Administrative Officer (P.W.12) has given a complaint and the same has been registered in Crime No.158/2003 under Section 174 of Code of Criminal Procedure, 1973. The complaint given by P.W.12 has been marked as Ex.P.4.

3. On receipt of Ex.P.4, the Investigating Officer viz., P.W.15 has filed a final report on the file of the Judicial Magistrate, Perambalur and the same has been taken on file in P.R.C.No.15/2004.

4. The Judicial Magistrate, Perambalur, after considering the facts that the offences alleged to have been committed by all the accused are triable by sessions court, has committed the case to the court of sessions, Perambalur Division and taken on file in Sessions Case No.47/2006 and subsequently, made out to the trial court.

5. The trial court, after hearing both sides and upon perusing relevant records has framed a 1st charge against all the accused under Section 498-A of the Indian Penal Code (hereinafter called as "IPC"); second charge against all the accused under Section 306 of the IPC and the same has been read over and explained to them. The accused have denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 16 have been examined, Exhibits P.1 to P.12 and Material Object 1 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime.

8. No oral and documentary evidence have been let in on the side of the accused.

9. The trial court, after hearing arguments of both sides and upon perusing relevant material on record has found all the accused not guilty under Section 306 of the IPC and ultimately acquitted them. Likewise, accused 2 and 3 are not found guilty under Section 498-A of the IPC and subsequently, acquitted them. The trial court has found the first accused guilty under Section 498-A and sentenced



him to undergo 25 months rigorous imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present criminal appeal has been preferred at the instance of the 1st accused as appellant.

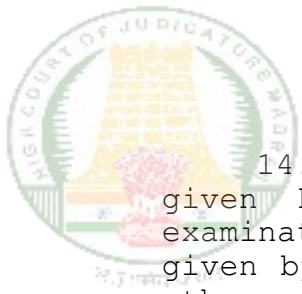
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10. The learned counsel appearing for the appellant/1st accused has contended vehemently to the effect that the specific charge framed against the appellant/1st accused is that he and remaining accused have used to torture the deceased by way of demanding gold jewels, cow and other articles, by means of dowry and since she has not been able to meet out their demand, she committed suicide, but for the purpose of proving the said aspect, there is no evidence on the side of the prosecution and the trial court, without considering the lack of evidence on the side of the prosecution, has erroneously found the appellant/1st accused guilty under Section 498-A of the IPC and therefore, the conviction and sentence passed by the trial court is liable to be interfered with.

11. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the parents of the deceased have been examined as P.Ws.2 and 3 and apart from their evidence, one Karuppaiah has been examined as P.W.16 and all of them has spoken about the torture made by all the accused and the trial court has rightly found the first accused guilty under Section 498-A of the IPC and therefore, the conviction and sentence passed by the trial court do not warrant interference.

12. As rightly pointed out by the learned counsel appearing on the side of the appellant/1st accused, the specific contention put forth on the side of the prosecution is that all the three accused have joined together and they used to torture the deceased by way of demanding gold jewels, cow and other articles, by means of dowry and since she has not been able to meet out their demands, she committed suicide on 19.11.2003.

13. It is true that the parents of the deceased have been examined as P.Ws.2 and 3. In fact, this court has perused the entire evidence given by P.W.3, mother of the deceased and she has not spoken about the demand of dowry, whereas P.W.3, father of the deceased, in his chief examination stated to the effect that the first accused has demanded dowry. But during the course of cross examination, he has given evidence to the effect that he does not know anything and his wife alone knows everything. Therefore, the evidence given by P.Ws.2 and 3 does not support the version of the prosecution.



14. At this juncture, the court has to look into the evidence given by P.W.16. The prosecution has examined P.W.16, after examination of the Investigating Officer. The specific evidence given by P.W.16 is that prior to occurrence, he met the deceased and other accused and effected Panchayat in connection with the alleged harassment and that itself would not be sufficient for coming to a conclusion that the appellant/1st accused has tortured her in connection with dowry demand.

15. The learned Additional Public Prosecutor has contended that the first accused has been examined by the Revenue Divisional Officer, where, he deposed that prior to occurrence, he attacked his wife and only due to that, she might have committed suicide.

16. In fact, the entire statement given by 1st accused has been scanned by this court and he merely stated that prior to occurrence he simply attacked his wife and further he opined, that may be the cause for committing suicide and that itself would not be sufficient for coming to a conclusion that only due to dowry torture, the deceased committed suicide.

17. As rightly pointed out by the learned counsel appearing for the appellant/1st accused, virtually on the side of the prosecution, no evidence is available so as to attract penal provision of 498-A of the IPC. The trial court, without considering the lack of evidence on the side of the prosecution has erroneously convicted the 1st accused/appellant under the said section.

18. In view of the discussion made earlier, considering the subsisting force in the contention made on the side of the appellant/1st accused, this criminal appeal is liable to be allowed.

19. In fine, the Criminal Appeal is allowed. The conviction and sentence passed by the trial court in Sessions Case No.47/2006 are set aside and the appellant/1st accused is acquitted. Bail bond executed by him shall stand cancelled. Fine amount paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nvsri



To

1.The Deputy Superintendent of Police
Perambalur Division, Perambalur District
(Kaikalathur Police Station) Cr.No.158/2003)

2.The Sessions Judge, Mahila Court,
Perambalur.

3. The Judicial Magistrate, Perambalur.

4. The Chief Judicial Magistrate, Perambalur.

5. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.S. Kamadevan, Advocate Sr.48341

Crl.A.No.35 of 2007

GP(CO)
Eu 30.09.15