

Crl.A.No.598/2013

Bail Slip

The Appellant/ist Accused viz., S.Bajaji, s/o.Sethuraman, aged 37, was directed to be released on bail by order of this Hon'ble court dated 08/08/14 in Crl.MP.1/2014 in Crl.Appeal No.598/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.598 of 2013

Balaji
S/o.Sethuraman

... Appellant/A1

-vs-

The State represented by
The Assistant Commissioner of Police,
Guindy Range, Chennai
J.7, Velacherry Police Station
Crime No.1726/2006

... Respondent/Complainant

Criminal Appeal filed under Section 374 r/w 382 of the Code of Criminal Procedure against the judgment of learned Sessions Judge, Mahalir Neethimandram, Chennai, passed in S.C.No.341 of 2007 on 03.09.2013.

For Appellants : Mr.Arl.Sundaresan, Senior counsel for
Ms.Al.Ganthimathi

For Respondent : Mr.M.Mohammed Riyaz
Government Advocate [Crl.side]

J U D G M E N T

This appeal arises against the judgment of learned Sessions Judge, Mahalir Neethimandram, Chennai, passed in S.C.No.341 of 2007 on 03.09.2013. Court below while acquitting A2 and A3 of offences u/s. 304 (B) or in the alternative 306 IPC, convicted

the appellant/A1 for offence u/s.498(A) sentencing him to 3 years R.I fine of Rs.5,000/- i/d 3 months S.I and for offence u/s. 306 IPC sentencing him to 10 years R.I and fine of Rs.10,000/- i/d 6 months S.I. Sentences were directed to run concurrently.

2. The case of the prosecution is that the marriage between A1 and the deceased Mrinalini was solemnised on 22.08.2005. After the marriage, the deceased was staying at Madurai along with A2, mother of A1 since A1 was working at Trivandrum. Though she conceived, she suffered an abortion owing to cruelty inflicted on her by A1. On A1's transfer to Chennai, the couple took up residence at Chennai. The deceased conceived again but was harassed and subjected to cruelty on demands for jewellery. The deceased sought succour through having the presence of her relatives at the matrimonial home. This was angrily objected to by accused/A1. Unable to bear humiliation and mental agony, she committed suicide by hanging on 06.11.2006.

3. A1 preferred complaint Ex.P.11 on 07.11.2006 at 08.00 hours. P.W.10, sub Inspector of Police, registered case in Crime No.1726 of 2006 on the file of respondent. Ex.P-12 is the Printed First Information Report. P.W.10 proceeded to place of occurrence and in the presence of witnesses, prepared Ex.P.13-Observation Mahazar and Ex.P.14- Rough Sketch. PW-12, Assistant Commissioner of Police, took up investigation on the same day, visited the place of occurrence and examined A1, P.W.4 his brother, P.W.10- Sub Inspector of Police and P.W.11-Inspector of Police and recorded their statements. The statements of P.Ws.1 and 2, father and mother of the deceased made at the inquest conducted by P.W.6-Thasildar were marked as Exs.P1 and P2. P.W.12 sent a request to P.W.6 to conduct inquest in Ex.P.6 P.W.12- Assistant Commissioner of Police recorded the statement of P.W.6- Thasildar on 08.11.2006. Record of proceedings and inquest report were marked as Ex.P.3 and P.4. P.W.12, examined one Murali and Head Constable Nagaraj and recorded their statements on 09.11.2006. He examined P.Ws.1 to 3 and two other persons and recorded their statements on 10.11.2006. Statements of A1, P.W.1 and 2 recorded at the inquest are Ex.P.5. P.W.12 altered the FIR registered u/s. 174(3) Cr.P.C to reflect offences u/s.498 (A) and 306 IPC. Alteration Report is Ex.P15. He arrested A1 on 10.11.2006 and seized gold ornaments produced by A1 under mahazar Ex.P.16. Form 95 filed there regards is Ex.P.17. P.W.12 forwarded A1 to judicial custody. He obtained the Inquest report on 19.12.2006 and recorded the statement of P.W.7- Personal Assistant to District Collector on the same day. Reports given by P.W.7 are marked as Exs.P.7 and 8. P.W.12 obtained Post Mortem Certificate-Ex.P.10 dated 09.11.2006 and examined P.W.9 Dr.Daniel. He examined one Dr.Mathikaran on 24.12.2006. On completion of investigation and filing of charge sheet informing commission of offences u/s. 498 (A) and 306 IPC,

the case, upon committal, was tried in S.C.No.341 of 2007 on the file of learned Sessions Judge, Mahalir Neethimandram, Chennai.

4. To substantiate its case, prosecution examined PWs.1 to 13. P.Ws.1 and 2 are the father and mother of the deceased. P.W.3 is the sister of P.W.1 while P.W.4 was the cousin of A1. P.W.5 is the driver of Police patrol vehicle. P.W.6-Thasildar has conducted inquest. P.W.7 is the P.A. to District Collector. P.W.8 had been examined to speak of an earlier abortion suffered by the deceased. P.W.9 is the post mortem Doctor. P.W.10 is the Sub Inspector of Police who registered FIR. P.W.11 is the Inspector who was on night duty who broke open the door of the room wherein the deceased was hanging. P.W.12 is the Investigating Officer. Exs.P1 to P17 were marked and one material object was marked. None were examined on behalf of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied charges. Learned trial Judge, on appreciation of the evidence, under judgment dated 03.09.2013, convicted the accused and sentenced as above.

5. Heard learned Senior counsel for appellant and learned Government Advocate [Crl.side] as also perused the records.

6. Learned Senior Counsel submitted that accused in the case were charged with offences u/s. 498(A) and 304(B) or in the alternative 306 IPC. Learned Senior counsel submits that the very framing of charges in the alternative between 304(B) and 306 was erroneous as both were distinct offences and the ingredients thereof were totally different. He submitted that grave prejudice has been caused to the accused by the error in framing of charges.

7. Learned Senior counsel submitted that P.Ws.1 and 2, father and mother of the deceased resided at Madurai, while the occurrence had taken place at the matrimonial home of the deceased and A1 at Chennai. P.W.1s statement before P.W.6 was to the effect that the appellant questioned the deceased on the presence of her relatives at the matrimonial home and spoke ill of her family members whenever she watched television. Though P.W.3 was the paternal aunt, she had been treated hostile by the prosecution since she had deposed to the deceased having been happy and content and had specifically denied the prosecution suggestion that A1 abused her and demanded jewels and material goods from her parents. Though neighbours of the deceased had been examined by P.W.12 none had been called as witnesses. It is the explicit admission of P.W.12 in cross that all persons examined by him had informed that deceased and accused lived a congenial and peaceful life.

8. Learned Senior counsel submitted that P.W.2 wife of P.W.1 and mother of the deceased was a totally unreliable witness.

While P.W.2 deposed that the deceased was forced into an earlier abortion the evidence of P.W.8- Doctor, who attended to the deceased at that point of time, informed the medical need for going in for such abortion. The evidence of P.W.4 who also has been treated as hostile reflected that at best there was some minor disagreement between the appellant/husband and deceased/wife.

9. Learned Senior counsel submitted that there absolutely was no material to support the charge of cruelty against the appellant or of any such conduct of the appellant as would drive the deceased to commit suicide. Learned Senior counsel submitted that the appellant stands wrongly convicted and this Court would set aside such conviction.

10. Learned Government Advocate (crl.side) submitted that the Trial Court on the material before it has arrived at a just finding and found it appropriate to convict the appellant for offence 498(A) and 306 IPC even while acquitting him for offence u/s. 304 (B) IPC. The reasoned approach of the Trial Court ought not to be interfered with.

11. Considered the rival submissions.

12. We do not find anything indicative of cruelty suffered by the deceased at the hands of the appellant in the evidence of P.W.1. Quite contrarily it is the admission of P.W.1 that at the inquest he had informed the Thasildar that the appellant/A1 never had made any demands for money, jewellery or material goods. P.W.2 is a most unreliable witness. Despite the very charge in the case informing that the first abortion suffered by the deceased arose on medical grounds and the evidence of P.W.8 Doctor is to such effect, she would depose that her daughter, the deceased, had been forced into an abortion. It is the evidence of P.W.2 that she had not informed P.W.6. Thasildar of the appellant/A1 having beat the deceased on the ground that the sreedhana articles were not good/sufficient. She has also deposed to not having stated before P.W.6 that the accused made statements to the effect that they had been rushed into picking the deceased as the bride and that they would have got much more had they gone elsewhere. The evidence of P.W.3 is indicative of happy congenial family life of the deceased.

13. On consideration of the facts and circumstances, this Court is of the view that the finding of conviction stands wrongly entered upon by the Court below. The benefit of doubt ought to have been given to the appellant.

This Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Sessions Judge, Mahalir Neethimandram, Chennai in S.C.No.341 of 2007 on 03.09.2013, is set aside and appellant is acquitted of all charges. Fine

amount, if any, paid shall be refunded. Bail bond(s), if any, executed by him shall stand cancelled.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Sessions Judge,
Mahalir Neethimandram, Chennai

2.The Assistant Commissioner of Police,
Guindy Range, Chennai
J.7, Velacherry Police Station

3.The Public Prosecutor,
High Court, Chennai.

4. The IX Metropolitan Magistrate,
Saidapet, Chennai.

5. The Chief Metropolitan Magistrate,
Egmore, Chennai. (for information)

6. The Superintendent,
Central prison, Puzhal, Chennai.

+1cc to Ms.Al.Ganthimathi, Advocate in sr.no.17695

Criminal Appeal No.598 of 2013

SKS(CO)
NR 27/10/2017

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