

BAIL SLIP

The appellant/accused namely Mathiazhagan, S/o.Chinnappan, be and hereby was directed to be released on bail vide order dated 12.10.2009 in MP.1 of 2009 in CrI.A.No.604 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on :12.07.2018]

[Pronounced on : 10.10.2018]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.604 of 2009

Mathiazhagan ... Appellant/Accused No.1

..Versus..

State rep.by

The Assistant Commissioner of Police,
Tambaram Police Station,
Kancheepuram District
(Crime No.876 of 2006)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the conviction and sentence passed by the learned Additional Sessions Judge (Mahila Court) at Chengalpattu, Kancheepuram District made in S.C.No.193 of 2007 by judgment dated 29.09.2009 convicting the appellant herein for the offence under Section 498(A) I.P.C and sentencing him to undergo 1 year R.I and a fine of Rs.500/- in default to undergo 3 months R.I.

For Appellant : Mr.T.R.Ravi

For Respondent : Mr.R.Surya Prakash,
Government Advocate (crl.side)

JUDGMENT

The convicted first accused is the appellant herein.

2. The case of the prosecution is that on the night of 30.05.2006 at about 9.00 pm, PW1, who is the wife of the first

accused, due to a quarrel between her and the first accused, set fire to herself and sustained burn injuries. She was taken to the hospital for treatment to Deepam Hospital by the first accused from where she was referred to Kilpauk Medical College Hospital, Chennai. During the course of treatment to the deceased, a statement was obtained from her, on the basis of which, the case in Crime No. 879 of 2006 was registered on 31.05.2006 under the caption 'accidental fire'. Subsequently, inspite of the treatment, the deceased succumbed to the injuries and therefore, the case in Crime No. 879 of 2006 was altered into one of Section 306 of IPC.

3. After investigation, the respondent-State filed a charge sheet alleging that the first accused - Mathizhayagan and A2 - Ilangovan (elder brother of A1) have subjected the deceased to mental cruelty and harassment owing to which the deceased set fire to herself and died. In order to prove the aforesaid allegation, 13 witnesses were examined as PW1 to PW13, Exs. P1 to P14 were marked and two Material Objects were exhibited. The trial Court, after conclusion of trial, acquitted the second accused on the ground that there is no specific overt act or material made available against him. However, the trial Court held that Thennarasi (deceased), wife of the first accused was not subjected to any dowry harassment and hence, acquitted the first accused from the charge under Section 304 (B) I.P.C and also 306 I.P.C, for the reasons recorded therein. At the same time, the trial Court convicted the first accused under Section 498(A) for causing cruelty and sentenced him to undergo rigorous imprisonment for a period of one year, together with fine of Rs.500/- in default to undergo three months simple imprisonment. Challenging the correctness of the said conviction and sentence passed by the learned Additional Session Judge, Mahila Court, Chengalpattu in S.C.No.193 of 2007, dated 29.09.2009, the first accused has preferred this appeal.

4. The learned counsel for the appellant would submit that:

i) The trial Court ought to have held that the ingredient of the offence under Section 498A of IPC is not made out especially when there is no specific charge was framed against the appellant herein, while so, the conviction and sentence imposed under Section 498(A) is bad in law.

ii) the trial Court ought to have held that non fulfillment of aspirations of the wife will not amount to harassment or cruelty. The trial Court mainly relied upon Ex.P6 which is said to have been given by the deceased Thenarasi to P.W.7 Judicial Magistrate for convicting the appellant herein for the alleged offence stated above, which is contrary to the complaint given by her based on which the case in Crime No. 879 of 2006 came to be registered.

ii) In the dying declaration it was stated by the deceased that she is a M.Phil Degree holder and she was not permitted by the appellant to go for a Teaching job. Further it was stated that if she want to go for job, she must leave the child and get divorce. Upon hearing the above words, the deceased said to have allegedly committed suicide by setting fire to herself.

iii) The dying declaration contains no statement with regard to harassment and cruelty caused by the appellant to his wife. The allegations are trivial in nature and they happens in the normal course and day to day affairs in every one's life. It will not constitute the offence under Section 498(A) of I.P.C, as there is no harassment or cruelty or unlawful demand.

5. The learned Government Advocate (crl.side) would submit that the marriage was solemnised on 25.01.2005 and a female child was born on 29.12.2005. The alleged concurrence had taken place on 30.05.2006, within a period of about 22 months. The trial Court, considering the oral and documentary evidence adduced by the prosecution, especially the dying declaration given by the deceased herself under Ex.P6, had clearly concluded that the deceased was subjected to matrimonial cruelty by demanding dowry and therefore, the deceased died by setting fire to herself. Further, the deposition of PW1 to PW13 would clinching by prove that the first accused, being the husband, had been instrumental for the death of the deceased, who died on 3.6.2006. Therefore, according to the learned Government Advocate, the trial Court is wholly justified in convicting the first accused for the offence under Section 498-A of IPC and it does not call for any interference by this Court.

6. Points for determination is that:

- i) Whether the Judgment of conviction passed by the sessions Judge (Mahila Court) is sustainable in law?
- ii) Whether the sentence is excessive?

7. The deceased Thennarasi was married to the first accused Mathiazhagan on 25.01.2005 and due to the wedlock, a female child was born on 29.12.2005 and the alleged occurrence had taken place on 30.05.2006 in which the deceased sustained burn injuries and died on 3.6.2006.

8. The second accused is the brother of the first accused.

9. The factual position with regard to relationship of the parties and also the solemnization of marriage in the year 2005 between them, the fact that they were residing at Lakshmipuram extension, Tambaram West, Chennai at the time of the occurrence are not in dispute.

10. As per the Final Report, the first accused had taken Rs.2 lakhs as a dowry from the deceased and compelled her to bring Rs.2 lakhs more from the parents house and also to effect name change to the motor cycle given by the father of the deceased in favour of the A2. In this context, the first accused subjected the deceased with matrimonial cruelty and on 3.5.2006 due to the pressure exerted by A1 and A2, the deceased committed suicide by self-immolation.

11. Though, charges under Sections 306 I.P.C and 304 I.P.C were framed by the trial Court, after appreciating the evidence of P.W.4-Maruthavanan and P.W.5-Minnal ammal, the brother and mother respectively of the deceased, the learned Sessions Judge has recorded an order of acquittal in respect of the above said charges namely 306 and 304 of I.P.C and this appeal is only confined to the conviction and sentence imposed on the appellant under Section 498(A) of I.P.C. In respect of the above said charge under Section 498(A), the prosecution examined P.W.1, the owner of the house who had let in the house for rent for the stay of the deceased and A-1. PW1 deposed that on the date of occurrence, the first accused came to his house and informed him that the deceased had sustained burn injuries while lighting the stove. Upon hearing from A-1, PW1 rushed to the scene of occurrence where he saw the deceased in blaze. PW1 also deposed that immediately, he arranged for an autorickshaw and A-1 accompanied the deceased to Deepam Hospital. However, during the examination of PW1, he turned hostile as he failed to depose about the essential material facts relating to the occurrence.

12. P.W.2 was the Doctor who had conducted the post-mortem and issued Exhibit.A2-Post Mortem certificate. P.W.3 is the Attestor of the Observation Mahazar and Seizure Mahazar namely Exhibit P.3 and Exhibit P.4 and seizure of M.O.1 to M.O.3. Thus, the entire case of the prosecution has rested upon P.W.4 (brother) and P.W.5- mother and P.W.7 Judicial Magistrate, who recorded dying declaration of the deceased on 31.05.2006 between 9.30a.m to 9.55 a.m at the Government Hospital, Kilpauk Medical College Hospital.

13. In this connection, it is pertinent to state that there is another dying declaration said to have been given by the deceased to the Inspector of Police on the very same day namely 31.05.2006 at about 3.50 a.m in the morning at the very same place namely intensive care unit for burn injury, Kilpauk Medical College Hospital, Chennai.

14. The suggestive case of the defense in respect of all the three charges before the Sessions Court appears to be that there was a fight between the husband and wife, the

deceased went to the kitchen to boil the milk for the child but accidentally got fire. When the deceased was admitted in the private hospital at the first instance namely Deepam Hospital, on the basis of the statement given by the deceased, it was recorded as "accidental fire" so also in the Accident Register issued at Kilpauk Medical Hospital on the date when the deceased was admitted there. These two documents were marked as Exhibits R2 and R1 respectively.

15. On going through the evidence of P.W.4, brother of the deceased namely Maruthavanan and P.W.5 mother Minnalammal, the trial Court has recorded a finding that the deceased was subjected to demand for dowry and she was harassed. Further, it was deposed that the deceased was also physically assaulted by A-1 when she questioned A-1 for selling 6 sovereigns of gold given to her at the time of marriage. PW4 further deposed that the first accused assaulted the deceased as to why she had called him when he was working in the office when he was questioned as to why he has to return home late in the night. It remains to be stated that P.W.4 has clearly deposed regarding his personal visit to the office of A-1 and assured him to look after his demand so that A-1 could lead a peaceful life with his sister. On combined reading of the chief and cross examination of P.W.4 brother of the deceased, this Court found that the said evidence is unblemished and without any rivalry and there is nothing to describe his evidence as exaggerative to connect the first accused to the charge under Section 498(A) of I.P.C.

16. Furthermore, P.W.5 Minnalammal, mother of the deceased has clearly deposed that while her daughter was under treatment, the deceased conveyed to her that due to continued harassment of the first accused, unable to bear the assault of the first accused demanding dowry, she immolated herself and this assumes significance to hold the first accused guilty of the charge framed against him under Section 498 (A) of IPC.

17. Furthermore, it is seen from the evidence of P.W.4 and P.W.5 that when P.W.4 brother questioned the attitude of the first accused in assaulting his sister, the deceased, A-1 has stated that since Thennarasi (deceased) raised her voice against him, he assaulted her. When PW4 asked the A-1 as to why he sold the jewels given at the time of the marriage, the first accused said that he was constrained to sell those jewels to purchase a house. P.W.5 mother of the deceased has categorically deposed that the first accused has picked up quarrel with her daughter and he forced her daughter to get the ownership of the motor vehicle given to her own brother and further he has stated that she was subjected to cruelty. It remains to be stated that P.W.1 owner of the house where the deceased and A-1 were living has categorically stated that the deceased self immolated

herself so also P.W.5 mother has stated that the deceased poured kerosene and set fire to herself. Further, PW.4 brother has stated that he smelled kerosene while her sister was taking treatment in the Government Hospital. On perusing the Observation Mahazar Ex.P3 attested by P.W.3 Karunakaran, it is seen that below the gas stove, they found M.O.1, M.O.2, M.O.3 kerosene bottle, half burnt plastic mat and match box.

18. It remains to be stated that in the Observation Mahazar, it was stated that kerosene was spread all over the kitchen and the said portion in Ex.P3 remains unchallenged in the cross-examination and this lends credence to the evidence of P.W.4 and P.W.5 that she had self immolated and the incident is not an accident as suggested by the defense side.

19. At this juncture, it is reported to state the suggestive case of the defence that it is an 'accidental fire' and the said fact has been reflected in Ex.R2 Medical sheet history given by Deepam Hospital where the deceased was first admitted and also in the Accident Register issued by Kilpauk Medical Centre under Ex.R1.

20. On perusing the Ex.R1, though the Doctor has stated that while, warming the milk the deceased said to have came into contact with fire in the gas stove. At this juncture, it is relevant to refer to Ex.P6 the dying declaration dated 31.05.2006 given by the deceased to the Judicial Magistrate on the said day. On a close screening and scrutiny of the dying declaration Ex.P6, this Court finds that it emphasis more on the issue and contradicts the defence theory of accidental fire. On perusal of Ex.P6 recorded by P.W.7 Judicial Magistrate, I find there is no flaw in the recording of the dying declaration as the same has been recorded by the Judicial Magistrate after observing necessary formalities touching upon the recording of the dying declaration and after taking a certificate from the medical Doctor as to the mental fitness of the deceased to give such a declaration. On perusal of the statement, it appears that the deceased studied upto M.Phil and though, she has got employment as a teacher, the same was not permitted by the first accused and whenever, the first accused came late from office and when it was questioned by the deceased, the first accused deprecated it and assaulted her. Further, the deceased said to have caused enquiry in the office where A-1 was working and on coming to know about such enquiry in the office regarding the reason for the delay in coming home, the first accused treated the deceased cruelly. He has also sold 6 sovereigns of jewels given to the deceased at the time of the marriage and on the fateful night when she got the appointment in a school to work as a teacher, for which initial deposit of 10,000/- rupees has to be made, she sought permission of her husband, A1 for mortgaging some of the jewels given to her at the time of

marriage, so as to join the job. However, the first accused refused permission to the deceased to join the job. The first accused also cautioned the deceased that if she want to go to the employment, she has to give her consent for divorce and to give the child to some other person. Above all, the first accused scolded the deceased by stating as to whether she has purchased the M.Phil., degree. These statement of the first accused, according to the deceased, had made her life miserable. Immediately, she went to the kitchen, poured kerosene and set fire to herself.

21. On perusal of the evidence of the above said dying declaration, this Court finds that the evidence of P.W.4 and P.W.5 regarding the alleged ill-treatment and cruelty done by the first accused to the deceased and also taking note of the fact that the first accused has not only refused to give permission to join the job but also denied to pay deposit amount Rs.10,000/- by mortgaging the jewel and further said to have uttered as if she had obtained decree by payment and got a certificate as if she studied M.Phil., and if she want to join the job she has to give consent for divorce by leaving the child to a third party. These statement of the first accused appears to have forced the deceased to commit suicide by self-immolation. The first accused ought to have conducted himself in a sensitive manner without causing mental agony and frustration to the wife by uttering her to give her consent for divorce before joining the employment and by leaving the child to some third persons.

22. Taking note of the circumstances involved in the case, the trial Court convicted the first accused for the offence under Section 498(A) I.P.C and the said finding is well founded and well merited, it does not warrant any interference at this appellate stage in the absence of any material contradiction or any other evidence to prove that such a finding arrived at by the Sessions Court is perverse. It appears that the trial Court has also taken note of the fact that at the time of admission of the deceased in the hospital, she had sustained 48% of the burn injuries. The trial Court also rendered a finding that unless the deceased self-immolated herself with kerosene, she could not have received such a percentage of burn injuries. Further, such degree of burn injuries is not possible without self-immolation. Even as per Ex.P6, the deceased had stated that immediately on hearing her cries, the deceased attempted to put off the fire and this only indicate that within such a short span of time, the deceased sustained 48% of burn injuries and it is not possible if she had sustained burn injuries by coming into contact with the fire in the stove, inadvertently. Therefore, the statement of the deceased under Ex.P6 clearly prove that she was subjected to harassment and

cruel treatment and thereby the charge under Section 498-A of IPC is clearly proved by the prosecution as against the first accused. Therefore, this Court finds that the prosecution has clearly proved beyond reasonable doubt that the deceased was subjected to cruel treatment and harassment by the first accused. On the contrary the accused/appellant has tried to probablize his case by filing Exs. R1 and R2 to show that the deceased sustained burn injuries not by self-immolation but due to accidental fire. Such defence raised on behalf of the first accused is not only improbable but it is contrary to the evidence made available by the prosecution, which were described in the preceding paragraphs. In such circumstances, I have no hesitation to hold that the prosecution has proved the charge under Section 498(A) IPC as against the first accused by adducing oral and documentary evidence, based on which the trial Court has come to the right conclusion to convict the first accused for the offence punishable under Section 498A of IPC.

23. Taking into consideration the entire evidence on record, the Court below concluded that the harassment caused to the deceased by the first accused has forced her to commit suicide by self-immolation and therefore, having regard to the above, the Court has awarded sentence of one year rigorous imprisonment for the offence under Section 498(A) and the quantum of the sentence awarded by the Court, being one year rigorous imprisonment, does not warrant any interference by this Court and accordingly, the sentence imposed on the first accused also is hereby confirmed.

24. In the result, this Criminal Appeal is dismissed. The conviction and sentence imposed by the learned Additional Sessions Judge (Mahila Court) at Chengalpattu, Kancheepuram District in S.C.No.193 of 2007 are confirmed. The fine amount imposed on the accused by the trial Court is also confirmed. The trial Court is directed to take steps to secure the accused/appellant and send him to prison in order to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

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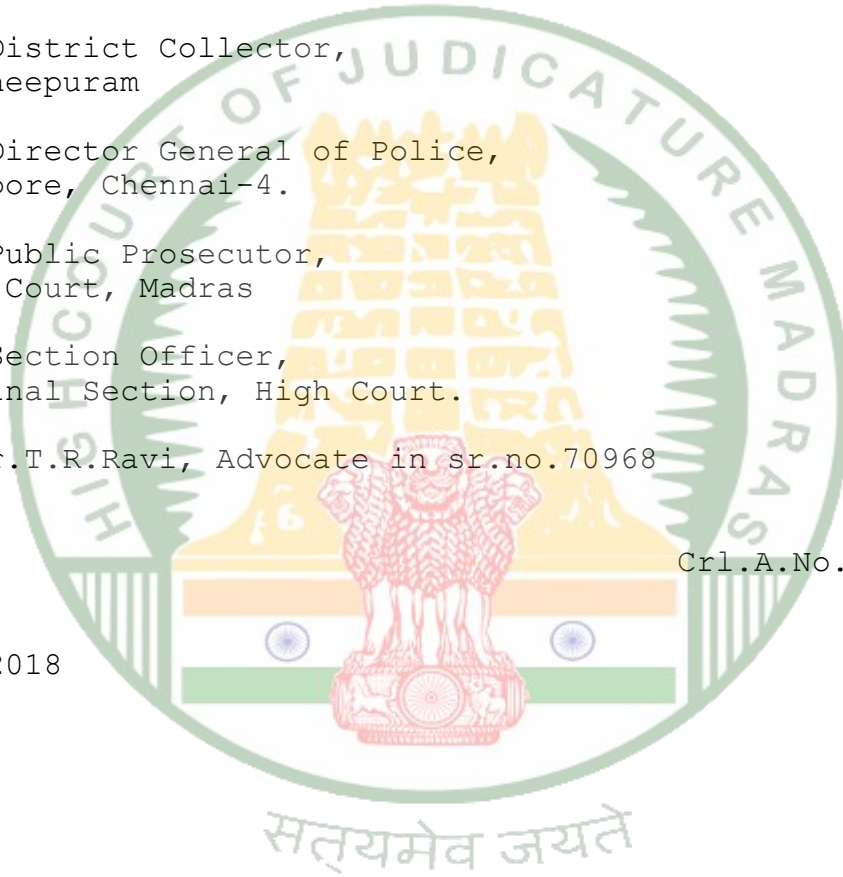
1. The Judicial Magistrate,
Tambaram, Kancheepuram District.

2. The Chief Judicial Magistrate,
Chengalpattu.
3. The Additional Sessions Judge (Mahila Court) at
Chengalpattu, Kancheepuram District.
4. The Principal and District Sessions Judge,
Chengalpattu, Kancheepuram
5. The Assistant Commissioner of Police,
Tambaram Police Station, Kancheepuram District.
6. The District Collector,
Kancheepuram
7. The Director General of Police,
Mylapore, Chennai-4.
8. The Public Prosecutor,
High Court, Madras
9. The Section Officer,
Criminal Section, High Court.

+1cc to Mr.T.R.Ravi, Advocate in sr.no.70968

Crl.A.No.604 of 2009

KJI (co)
CS/16/11/2018



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