

Bail Slip

That the Appellant/Accused namely Nedunchezhiyan S/o Chinniaillai was released on bail as per order of this court dated 09.12.2009 in MPNo.1/2009 in CrI.A.No.739/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Criminal Appeal No.739 of 2009

Nedunchezhiyan ... Appellant/A.1

... Vs ...

The State of Tamilnadu
Rep. By The Inspector of Police
Thirumanoor Police Station
Thirumanoor
Ariyalur Taluk & District
(Crime No.59/2006) ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Cr.P.C., against the order of conviction dated 22.10.2009 passed in S.C.No.63 of 2007 on the file of the Mahila Court, Perambalur.

For Appellant : Mr.C.S.S.Pillai

For Respondent : Mr.R.Ravichandran
Government Advocate (Criminal Side)

सत्यमेव जयते
JUDGMENT

The Criminal Appeal has been filed under Section 374(2) Cr.P.C., against the order of conviction dated 22.10.2009 passed in S.C.No.63 of 2007 on the file of the Mahila Court, Perambalur.

2. The brief facts of the prosecution case is as follows:-

(i) P.W.1 - Govindaraj is the father of the deceased.
P.W.2 - Aandal is the mother of the deceased. P.Ws.3, 4 and 6 are relatives of P.W.1. P.W.5 is neighbour of A.1 and the deceased. A.1 is the husband of the deceased. A.2 is the brother-in-law of the deceased.

(ii) Marriage of A.1 and the deceased was performed on 22.02.2005. After the marriage, there was frequent quarrel in between them, for which, A.1 harassed the deceased and demanded dowry. Further, A.2 also tortured the deceased for illegal relationship and they continuously driven away the deceased from the matrimonial home to her parents house. At one point of time, they demanded Rs.25,000/- as dowry and suspected her character. Hence, for an unbearable torture, the deceased poured kerosene and set fire on her and committed suicide on 06.03.2006 and died on 20.03.2006. In respect of which, P.W.1, who is the father of the deceased, lodged a complaint, which is marked as Ex.P.13.

(iii) P.W.17, the Inspector of Police, received the complaint from P.W.1 and registered a case in Crime No.59 of 2006 for offence under Section 306 I.P.C. The Investigating Officer, took up the case for investigation and went to the place of occurrence and he prepared Observation Mahazar - Ex.P.10, Rough Sketch - Ex.P.16, Seizer Mahazar - Ex.P.11 and recorded the statement of P.W.1 as Ex.P.12. Further, he recovered the Material Object Series - M.Os.1 to 3. Further, he conducted inquest over the dead body of the deceased, in the presence of witnesses and marked the Inquest Report as Ex.P.8 and after examining Medical Officer and other witnesses, he altered the case under Sections 498A, 304B and 306 IPC. That alteration reports were marked as Exs.P.17 & 18.

(iv) The Sub-Inspector of Police, took up the case for further investigation and arrested A.1 and A.2. Thereafter, P.W.17, took up the case and laid final report against A.1 and A.2 under Sections 498A, 304B and 306 IPC. Trial was proceeded against A.1 and A.2.

3. Based on the above materials, the trial Court framed charges for the offences under Sections 498A, 304B and 306 IPC against both the accused.

4. In order to prove the case of the prosecution, on the side of the prosecution, witnesses P.Ws.1 to 17 were examined; documents Exs.P.1 to 18 were marked and material objects M.Os.1 to 3 were marked.

5. When the trial Court, examined the accused under Section 313 Cr.P.C, in respect of the incriminating evidences available against them, they denied their complicity in the crime and pleaded innocence. However, they neither choose to examine any witnesses nor to mark any documents.

6. The trial Court, after considering the oral and documentary evidences, has found the A.1 guilty under Sections 498A and 306 IPC and accordingly, convicted him under Section

498A IPC and sentenced him to undergo 3 years Rigorous Imprisonment with fine of Rs.1,000/- in default to undergo 3 months Rigorous Imprisonment and under Section 306 IPC sentenced to undergo 5 years Rigorous Imprisonment with fine of Rs.1,000/- and in default to undergo 3 months Rigorous Imprisonment. Further, the trial Court acquitted the A.2 from all charges.

7.Challenging the said conviction and sentence, the appellant/A1 has come up with this Appeal.

8.Heard the learned counsel appearing for the appellant and the learned Government Advocate (Criminal Side) appearing for the State.

9.The learned counsel for the appellant would contend that there is no material whatsoever available on record to prove the charges under Sections 498A and 306 IPC against the accused/A.1. Ex.P.13 is totally contradictory to the evidence of P.Ws.1, 2 and 15. Even, the dying declaration is not corroborated with the evidence of P.Ws.1, 2 and 15. Admittedly, the deceased committed suicide at her husband's house. Therefore, statement to the effect that the accused instigated the deceased is an improved version and cannot be believed. Hence, he prayed for acquittal of the accused.

10.Per contra, the learned Government Advocate (Criminal Side) appearing for the State would submit that P.W.1 is the father of the deceased. P.W.2 is the mother of the deceased and P.W.15 is the sister of the deceased. They have clearly spoken about the frequent quarrel in between the accused and the deceased. Further, A.1 and A.2 demanded dowry frequently and driven away the deceased from matrimonial home, to her parents house. In an earlier occasion, at the instance of P.Ws.3 and 4, disputes between A1 and the deceased were compromised and the parents of the deceased sent back her to the matrimonial house. A minor discrepancy occurred in the prosecution case is that the presumption under Section 113B of the Indian Evidence Act, always in favour of the victim to the crime and the dying declaration itself is sufficient, in order to prove the cruelty caused against the deceased by A.1. Therefore, the Judgment of the trial Court need not be interfered with.

11.In the light of the above submissions, it has to be decided, 'whether the prosecution has proved the guilt of the accused/A.1 beyond all reasonable doubts ?'.

12.Before going into the said issue, for better appreciation, it is relevant to extract Sections 306 and 498A IPC. The same read as under:-

"306. Abetment of suicide – If any person commits

suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

.....
.....

498A. 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 purpose 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.

13. It is also relevant to refer the decision of the Hon'ble Apex Court in the case of K.V.Prakash Babu Vs. State of Karnataka (Criminal Appeal Nos.1138 – 1139 of 2016 dated 22.11.2016). The relevant paragraphs are as follows:-

"10. In view of the aforesaid evidence, the question that emerges for consideration is whether the conviction under Section 498A and 306 IPC is legally justifiable in this context. We think it appropriate to refer to Section 498A of the IPC. The said provision reads as follows:-

"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 willful 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"

11. The said provision came up for consideration in *Giridhar Shankar Tawade vs. State of Maharashtra*[1], where the Court dwelling upon the scope and purport of Section 498-A IPC has held thus:-

The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A.

12. In *Gurnaib Singh v. State of Punjab*[2], while dwelling upon the concept of cruelty enshrined under Section 498-A the Court has opined thus:-

"Clause (a) of the Explanation to the aforesaid provision defines cruelty to mean any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide. Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty."

13. The aforesaid analysis of the provision clearly spells how coercive harassment can have the attributes

of cruelty that would meet the criterion as conceived of under Section 498-A of the IPC. Thus, the emphasis is on any wilful conduct which is of such a nature that is likely to drive the woman to commit suicide. The mental cruelty which is engraved in the first limb of Section 498-A of the IPC has nothing to do with the demand of dowry. It is associated with mental cruelty that can drive a woman to commit suicide and dependent upon the conduct of the person concerned."

14. On cumulative reading of the above provisions, made it clear that the Hon'ble Supreme Court as well as the legal position firmly established is that "suicidal death" of a married woman within seven years of her marriage is covered by the expression death of a woman is caused or occurs otherwise than under normal circumstances as used in Section 304B IPC. To attract the provisions of Section 304B IPC, one of the main ingredients of the offence which is required to be established is that soon before the death she was subjected to cruelty and harassment in connection with the demand of dowry. Now keeping in mind the above principles laid by the Hon'ble Apex Court, it has to be decided whether any material is available to implicate the accused in the present case under Sections 306 and 498A IPC.

15. The evidence of P.W.1, the father of the deceased clearly indicates that the deceased was residing in the matrimonial home. Admittedly, it is not in dispute that on 06.03.2006, the deceased sustained injuries and immediately, she was taken to the Medical College and Hospital, Tanjore. P.W.16, the Medical Officer, who admitted the deceased in the hospital, makes it clear that at the time of admission, the deceased was sustained with bare injuries due to the burnt caused by pouring kerosene on her. Though the said occurrence was took place on 06.03.2006, the deceased was died on 20.03.2006. Admittedly, P.Ws.1 and 2 were not available at the scene of occurrence and after getting information, they rushed to the hospital.

16. It is stated in the statements of P.Ws.1 and 2 that the deceased was the second daughter to them. Further, they have spoken that the marriage between the deceased and A.1 was a arranged one. Immediately after two months of marriage, A.1 and A.2 (A.2 - who is the brother of A.1), tortured the deceased continuously and driven away the deceased from her matrimonial home. Further, A.1 and A.2, came to the village of P.W.1 after consuming alcohol and shown the finance company notice and demanded Rs.25,000/- for settlement of the issue and left the deceased in her parents house. After 20 days, A.2 and the relatives of P.W.1 conducted panchayat and pacified the issue between the deceased and A.1. Further, A.2 sexually tortured

the deceased, which was not questioned by A.1, even it was informed to him by the deceased. Hence, both A.1 and A.2, without considering that the deceased was 7 months pregnant, continuously tortured her. While preparing for baby shower function, parents of the deceased were received information that the deceased was admitted in the hospital. However, on perusal of P.W.2's statement, it is clearly stated that A.1 poured kerosene on the deceased and A.2 only set fire on her. But, the said version is not supported by the evidence of P.W.1. Even the evidence of P.W.15 also not corroborated with the same. Further, the inquest report totally contradictory in nature to the version of the prosecution. All the allegations of P.Ws.1, 2 and 15 were not available in the initial investigation conducted by the revenue authorities. Even, on perusal of the dying declaration, the deceased stated that her husband abused her in the morning by suspecting her fidelity. Further, the dying declaration not corroborates with the evidences of P.Ws.1,2 and 15.

17.However, on perusal of the statements of P.Ws.3,5 and 6, who are known relatives of P.W.1, clearly admits that there is no matrimonial dispute between A.2 and the deceased. Though, P.W.3 has turned hostile, in his prosecution examination, he clearly stated that on an earlier occasion, the deceased attempted to commit suicide and the same was questioned by P.W.3. Subsequently, she denied the same. Therefore, in view of the inconsistent statements of dying declaration, it is unsafe to act upon the dying declaration of the deceased to base the conviction on the accused/A.1. Further, the evidences of P.Ws.3, 5 and 6 do not show any continuous quarrel between A.1 and the deceased. No doubt, the deceased was died due to burn injuries and kerosene was found on her body. When two different views were given by the deceased and her parents, that the parents of the deceased made allegations only on the part of dowry demand and the deceased in her dying declaration stated that her husband abused her by suspected her fidelity. In such a situation, it is very unsafe to rely upon the dying declaration against the accused/A1 for implicating him for the offences under Sections 498A and 306 IPC.

18.Considering all these aspects, I am of the view that the prosecution has not proved the guilt beyond all reasonable doubts. Thus, the appellant/A.1 is entitled to the benefit of doubt.

19.On perusal of the entire evidence, no material was available to implicate the accused/appellant harassed the deceased or instigated the deceased to take the extreme step of committing suicide. In the absence of any positive material, this Court except no other option, is inclined to interfere with

the conviction passed by the trial Court.

20. Accordingly, Criminal Appeal is allowed. Judgment passed by the Mahila Court, Perambalur in S.C.No.63 of 2009 dated 22.10.2009 is set aside. The accused/A.1 is acquitted. Fine amount if any paid already, shall be refunded to him. Bail bond, if any, shall stand canceled.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Ariyalur.
- 2 - do - Through' The Chief Judicial Magistrate, Perambalur.
3. The Mahila Court, Perambalur.
4. The Superintendent, Central Prison, Trichy.
5. The Inspector of Police
Thirumanoor Police Station
Thirumanoor, Ariyalur Taluk & District.
6. The Public Prosecutor, High Court of Madras.
7. The District Collector, Ariyalur.
8. The Director General of Police, Mylapure, Chennai-4.
9. The Superintendent of Police, Trichy.

Copy To: The Section Officer, Criminal Section,
High Court of Madras.

+1cc to Mr.C.S.Spillai, Advocate SR.No.85516

Criminal Appeal No.739 of 2009

MG (CO)
GMY (28/01/2019)