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Bail Slip

The Petitioner/Accused viz., B.S. Prakash S/o Chidambaram was directed to be released on bail as per order of this court dated 27.08.2010 and made in Crl.M.P. No. 1/2010 in Crl.A. No. 517/2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A.No.517 of 2010

B.S.Prakash

.. Appellant

Vs.

State by

The Inspector of Police,
Ambattur Police Station,
Ambattur,
Thiruvallur District.
(Cr.No.532/09)

.. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records and to set aside the judgment and sentence dated 30.07.2010 imposed in S.C.No.58 of 2010 on the file of the learned Additional Sessions Judge, Fast Track Court No.II, Poonamallee.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mrs.T.P.Savitha

Government Advocate (Criminal Side)

JUDGMENT

The present Criminal Appeal has been filed challenging the order passed by the learned Additional Sessions Judge, Fast Track Court, Poonamallee in S.C.No.58 of 2010 dated 30.07.2010 convicting the appellant under Section 498A IPC, sentencing him to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for a period of 3 months.

2.I heard the submission of Mr.M.Krishnamoorthy, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) appearing on behalf of the State.



3.The facts leading to the filing of the present appeal is that the appellant is the husband of the deceased and it was alleged that he had demanded dowry from the deceased and also used to assault her in a drunken mood and she was not even given proper food at times. The deceased on 15.06.2009 attempted to commit suicide by jumping down from the terrace of the house and succumbed to injuries on 04.07.2009 and the appellant stood trial and was tried for offences under Sections 498A and 304B IPC and Section 4 of Dowry Prohibition Act, 1961.

4.The case of the prosecution before the trial Court was that the accused/appellant and the deceased got married on 20.08.2008 and the accused and the deceased used to quarrel often and the accused has forced the deceased to pawn the jewels that were given to her during her marriage and also demanded her to bring Rs.20,000/- from her parents. Since she was unable to accede to his demands, he constantly harassed her and abused her in an inebriated condition after consuming alcohol and the deceased, on 15.06.2009, at about 6.00 p.m. in the evening, the deceased jumped off from the terrace attempting to commit suicide and was badly injured with several fractured bones and immediately she was admitted for treatment in the hospital and ultimately succumbed to the injuries on 04.07.2009 at about 12.25 p.m. The complaint was given on 02.07.2009 by one Chandramouli, PW1 who is the brother of the deceased and the FIR was registered on the same day. It was argued before the trial Court that the accused was a regular alcoholic and he regularly abuses his wife physically which has led to her taking the decision of ending her life and after her death on 04.07.2009, the Revenue Divisional Officer has conducted inquest and in his report, he has given findings that there is a possibility of dowry harassment in this case and has given a finding that the death has occurred due to dowry harassment in this case.

5.PW1 to PW13 were examined as witnesses and 14 Exhibits were marked on the side of the prosecution and there were no witnesses or exhibits on the side of the defence. PW1, PW2 happen to be the brother and the father of the deceased and PW4 happens to be her relative. PW5 and PW6 who are also the relatives of the deceased turned hostile and PW7 is the neighbour of the accused. The trial Court, after taking into consideration the statements made by PW1, PW2, PW4 and PW7 who have all in union deposed that the accused has manhandled his wife on several occasions and cruelty was meted out to her which drove her to commit suicide. On the side of the defence, a stand was taken that the deceased was having some psychological problems and in fact, has taken treatment from the psychiatrist even prior to marriage. This has also been admitted by PW1 in cross examination. Though no materials were produced on behalf of the defence before the trial Court to prove that she had



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psychological issues, the admission made by PW1 cannot be ignored. It is also pertinent to note that since there was no evidence to prove that there was dowry harassment prior to the unfortunate incident that has taken place leading to the death of the deceased, the trial Court has come to a finding that offence under Section 304B IPC and Section 4 of the Dowry Prohibition Act could not be proved at all and hence has absolved the accused in that respect.

6. Therefore, one fact that becomes clear is that the ingredients of Section 304B of IPC and Section 4 of the Dowry Prohibition Act, according to the trial Court have not been attracted; hence, the appellant cannot be held to have committed the above said offences. Therefore, the only point that has to be decided here is whether cruelty was meted out to the deceased by the appellant and whether the ingredients of Section 498A of IPC have been satisfied to sustain the conviction of the accused.

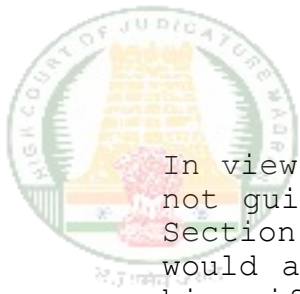
7. It has been contended by the learned counsel for the appellant that the trial Court has completely ignored the fact that the wife of the appellant suffered from some psychological problems and in fact, from the date of occurrence to the date of registration of the FIR, the time period is almost more than two weeks and hence, the very delay in lodging the complaint is indicative of the intention of the family members to frame the accused and harass him with a view to seek vengeance against him.

8. Section 498A of IPC was enacted with an intention to ensure that a woman is not subjected to cruelty by her husband or her relatives and this provision acts as a deterrent against these persons if they intent or attempt to subject the woman to cruelty. Section 498A of IPC read as follows:

"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."



In view of the fact that the trial Court has found the appellant not guilty of committing offences under Section 304B of IPC and Section 4 of the Dowry Prohibition Act, the limited issue that would arise is to ascertain whether the appellant has subjected his wife to cruelty which was the direct and proximate reason for her to end her life. At this point, it has to be noted that the explanation to Section 498A of IPC defines cruelty in two different contexts. The first limb deals with a wilful conduct which drives the woman to commit suicide and grave injury to herself and the second explanation is with respect to harassment with a view to meet the unlawful demands of the husband and his family members. Merely because a woman commits suicide within one year of her marriage, it cannot be presumed that the reason for her death is either cruelty or dowry demand. Though the presumption under Section 304B of IPC is against the husband and other members, invoking Section 498A of IPC requires that the burden of proof is on the prosecution to prove it beyond reasonable doubt that the wilful conduct of the husband has driven the wife to commit suicide.

9. In the instant case, it is quite evident that nowhere has the prosecution been able to demonstrate that a wilful act was the reason that drove the deceased to commit suicide. Therefore, in the absence of establishing that there is a link between the wilful act and the attempt to commit suicide, Section 498A of IPC cannot be invoked.

10. Therefore, I have no hesitation in holding that the trial Court is not justified in convicting the appellant under Section 498A of IPC and accordingly, the appeal is allowed, and the conviction and sentence imposed on the appellant/accused by the trial Court vide the impugned judgment in S.C.No.58 of 2010 dated 30.07.2010 is set aside, he stands acquitted of all charges levelled against him. The fine amount, if any, paid by him shall be refunded to him. It is reported that the accused is on interim bail. The bail bond executed by him shall stand cancelled in view of the above said finding.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

vs

To

1. The Additional Sessions Judge,
Fast Track Court II, Poonamallee.



2. The Judicial Magistrate
Ambattur.

3. Do Thro The Chief Judicial Magistrate
Ambattur.

4. The Inspector of Police,
Ambattur Police Station,
Ambattur,
Thiruvallur District.

5. The Public Prosecutor
High Court, Madras.

+1 CC to M/s.M. Krishnamoorthy, Advocate sr 32628.

Crl.A.No.517 of 2010

SP(16/05/2018)