

Bail Slip

The Appellant Viz., S.Elango aged about 25 years, S/o Subramani was directed to be released on bail in Crl.M.P.No.1 of 2010 in Crl.A.No.547/2010 by an order dated 29.10.2010.

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on :21.08.2018

Pronounced on :30.10.2018

Coram:

The Honourable Mr.Justice RMT.TEEKAA RAMAN

Criminal Appeal No.547 of 2010

S.Elango

.. Appellant

/versus/

The State of Tamil Nadu,
rep.by Assistant Commissioner,
West Range,
(Law and Order), Salem City,
Suramangalam Police Station,
(Crime No.839 of 2007) .. Respondent

Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction imposed by the Sessions Judge/Mahila Court, Salem in S.C.No.247 of 2009, dated 12.05.2010 sentencing the appellant/accused to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo 3 months Rigorous Imprisonment for the offence under Section 498(A) of IPC and to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo Rigorous Imprisonment for three months for the offence under Section 306 of IPC.

For Appellant :Mr.C.K.M.Appaji

For Respondent :Mr.V.Saratha devi
Government Advocate(criminal side)

J U D G M E N T

The sole convicted accused is the appellant herein. Challenging the correctness of the conviction and sentence passed by the Mahila Court, wherein the accused was found guilty of offence under Sections 498(A) and 306 of IPC and he was convicted and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for 3 months under Section 498(A) of IPC and he was also convicted and sentenced to undergo Rigorous Imprisonment for Five years and to pay a fine of Rs.1,000/- in default, Rigorous Imprisonment for 3 months under Section 306 of IPC, the appellant herein has filed the present appeal.

2. The respondent-State has filed a final report against the accused alleging that the accused and deceased Srividhya had loved each other and the marriage between them was solemnized at Subramaniyar Koil, Sooramangalam and that they were living in a house which is opposite to the house of the parents of Srividhya. The accused had demanded jewels from the deceased girl by telling her to bring from her parent of the house and due to which, the accused caused ill-treatment and cruelty to the deceased girl and also used filthy language. On 06.07.2007, at about 10.00 p.m, in the house of the accused, while the accused demanded the deceased to feed him food, since he got injury on his hand, the deceased told him to take food with the help of spoon and having irritated over the reply of the deceased Sri vidhya, the accused had beaten on her cheek and he went out telling the deceased that before he comes to the house, she must die otherwise he would kill her. Due to the said abetment, the deceased has committed suicide by hanging herself in the house of the accused and hence, the First Information Report was registered for the offence under Sections 498(A) and 306 of IPC in crime No.839 of 2007. After invetgiation, charge sheet has been filed before the concerned Court and the same was taken on file as PRC case and after made out the sessions offence, it was renumbered as S.C.No.247 of 2009.

3. To prove the charges, the prosecution had examined the witnesses as PW-1 to PW-10 and marked the documents as Exs.P1 to P11 and also marked the material object as M.O.1. On the side of the defence, DW1(Tmt.Kala) and DW2(Tmt.Saradha) were examined.

4. After considering both oral and documentary evidence, the learned Sessions Judge has convicted the accused and sentenced as stated supra. As against the above conviction and sentence, the present Criminal Appeal is filed.

5. The learned counsel appearing for the appellant/accused has contended that the entire prosecution is rested upon the evidence of PW-1 (Tmt.Mythili), PW-2 (Thiru.Kandasamy), PW-3 (Tmt.Govindammal) and PW-4(Thiru.Selvaraj) with reference to an isolation incident that the deceased told that the accused asked the deceased to feed him food and that the deceased told him to take food with the help of spoon. Except this evidence, there is no other incident and the ingredient of Section 306 of IPC is made out. Further, there is a material contradiction between the evidence of parents of Srividhya (PW-1 and PW-2) with regard to the alleged demand of dowry and there is a material contradiction regarding the version of disclosure of information as to conduct of the accused on the deceased as projected by the prosecution and PW-2 father is only hearsay evidence as it could be seen from the evidence. Therefore, he could contend that the conviction laid by the trial Court is unsustainable in law and he prayed for acquittal.

6. The learned Government Advocate(crl.side)made his submission in support of the judgment of the learned trial Court.

7. Point for consideration:

(i)Whether the judgment of conviction under Sections 498(A) and 306 of IPC are sustainable under law?

(ii)Whether the sentence awarded by the trial Court is excessive?

8. After hearing the rival contentions put forth by the respective counsel on behalf of the appellant as well as State and taking into consideration of the oral evidence of the private prosecution witnesses viz., PW-1 to PW-4 and the Police witness (PW-10) and also considering the evidence of DW1-Tmt.Kala and DW2-Tmt.Saradha and the documentary evidence of Ex.P1 to Ex.P11, it is seen that PW-1 and PW-2 are the parents of the deceased. PW-3(Tmt.Govindammal) is the grandmother of the deceased and the accused and the deceased loved each other and at the time of the marriage, the deceased was studying 11th standard; at that time, without knowledge of her parents(PW-1 and PW-2), the deceased had married the accused in a temple; and they were residing at the opposite house of her parents are all admitted facts and the deceased has committed suicide within a period of seven years from the date of marriage in the matrimonial house.

9. PW-6(D.Thiru. Kesavalingham), who has conducted post-mortem on the body of the deceased has categorically stated that the deceased had died due to hanging. PW-7(Thiru.Khajamohideen)

and PW-8(Thiru.Ponnuvel) who are the Revenue Officials had deposed regarding conducting Inquest Report and RDO report respectively, which were marked under Ex.P5 and Ex.P6 respectively. PW-9(Thiru.Rajendran, Inspector of Police) and PW-10(Thiru.Baskaran, D.S.P) are the police witnesses, who had deposed regarding sending the dead body to conduct post-mortem and preparation of Ex.P7[observation mahazar] Ex.P8[Seizure Mahazar]. After registration of Ex.P9-First information Report, final report has been filed after investigation.

10. On perusal of the version of private witnesses PW-1 and PW-2, it is seen that except isolated incident that the accused, who is a Painter by profession, had used some hurting words and had beaten her with his hand and on the fateful day, at about 10.00 p.m he has asked his wife to feed food in his mouth, for which the victim is said to have replied in hurting words. Due to which, the accused is said to have uttered words against the victim and subsequently, she committed suicide by hanging. It is the further evidence of PW-1 and PW-2 that the victim girl came to the house of PW-1's mother and conveyed her about the hurting act of her husband. At this juncture, it is relevant to point out that it is a specific evidence of PW-3 that as the victim girl married the accused without the consent of her parents, PW-1 and PW-2 are not in talking terms with the deceased and PW-3 alone is in talking terms with her grand-daughter viz., the deceased girl. However, the mother of the victim girl has deposed that on the date, the victim came and disclosed the hurting words expressed by the accused, in the presence of PW-3. However, the said version of PW-1 regarding the discloser of hurting words, alleged to have been uttered by the accused against the victim is found be material contradiction with the evidence of PW-3. While PW-3 has stated that the deceased came and told her that her husband asked to feed the food but she refused to do so and replied that with the help of spoon he can take the food and the same only conveyed to PW-1 assumes significance. It remains to be stated that, this Court has also found the material contradiction with regard to the place of discloser of information as to the utterance of the hungry words of the accused with the deceased.

11. Furthermore, it is admitted by PW-2 that he was admitted in the hospital for treatment and the victim has visited him in the hospital. In this connection, the evidence of DW-1 and DW-2 assumes significance, who could depose that when PW-2 (Thiru.Kandasamy, father of the victim girl) was admitted in the hospital for taking treatment, the victim went and saw his father in the hospital and PW-2 said to have uttered that why you come and see me, you have went on your own way and do not say your are having father and in another event, she

(victim) went to receive the tap water with the mother, she said to have been also uttered humiliated statement which is seen from the evidence of DW1 and DW2 and hence, the learned counsel appearing for the appellant could rely upon the evidence of DW1 and DW2, who had have stated that in view of the humiliation caused to the victim girl by none other than the parents of the deceased PW-1 and PW-2, on a date of incident, she had committed extreme step of self-distracted appears to be probable.

12. In this regard, it is to be stated that even assuming the words said to have been uttered by the accused on the fateful day namely, "she must die before my return", does not satisfy the essential ingredients viz., instigation or abetment or inducement driving the victim girl to take the extreme step as contemplated under Section 306 of IPC. From the evidence of PW-1, PW-2 and PW-3, it is seen that with regard to a petty quarrel in the families a casual remarks of the husband towards his wife in the ordinary course of life will not amount to abetting suicide, because those words are not with any mens rea as held by the Hon'ble Supreme Court in Swamy Prahaladas v. State of Madhya Pradesh reported in 1995 Supl.(3) SCC 438.

13. In the absence of any positive act on the part of the accused and what was projected by PW-1 and PW-2 along with PW-3 appears to have been emerged out of ordinary, routine quarrel between the wife and husband, being a drunkard, cannot be considered as a positive act, on the part of the accused to force or to provoke or to instigate the wife to commit suicide and it will not fall under Section 306 of IPC as held by the Supreme Court in the decision reported in Assoo v. State of M.P. Reported in 2012 CrL.L.J.658.

14. With regard to the allegation of demanding dowry, this Court finds that there is material contradiction between the version of PW-1 and PW-2 with that of PW-3 and it appears that the trial Court has not properly approached the case in proper angle and simply convicted him, without applying the law laid down by the Hon'ble Apex Court and as such, this Court finds that the words said to have been uttered by the accused does not fall under Section 306 IPC. Besides it is noticed that there is a material contradiction between the version of PW-1 and PW-3 with regard to the place of disclosure of information regarding the utterance of angry words by the accused and also the alleged instigation was not proved in the manner known to law and there is no whisper regarding demand of dowry by the accused PW-1 as projected in the final report and except the isolated event spoken to by PW-1 and PW-2, no other incident has been referred to and accordingly, this Court holds that the act

of the accused does not fall under Section 306 IPC or under Section 498(A) of IPC and accordingly, the conviction under Sections 306 of IPC and 498(A) of IPC found by the trial Court is hereby set aside.

15. In the result, the Criminal Appeal is allowed and the judgment of conviction imposed by the Sessions Judge/Mahila Court, Salem in S.C.No.247 of 2009, dated 12.05.2010 is hereby set aside. Bail bond, if any executed by the accused shall stand cancelled. Fine amount if any paid by the accused shall be refunded to him, forthwith.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.II,
Salem.
- 2.The Chief Judicial Magistrate,
Salem.
- 3.The Superintendent,
Central Prison,
Salem.
- 4.The Sessions Judge,
Mahila Court, Salem.
- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Assistant Commissioner West Range,
(Law and order) Salem City Suramangalam Police Station,
- 7.The Director General of Police,
Mylapore, Chennai.

8.The Section Officer,
Criminal Section, High Court,
Chennai-104.

+lcc to Mr.C.K.M.Appaji, Advocate Sr.74252

Cr1.A.No.547 of 2010

ppa[co]
srg 10/12/2018



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