

Bail Slip

The Appellant/Accused No.1 Viz., R.Vadivel, S/O Rajappan is directed to be released on bail as per order dated 2/7/2013 and made in CrI.M.P.No.1 of 2013 in CrI.A No.440 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on :06.07.2018]

[Pronounced on :23.10.2018]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.440 of 2013

R.Vadivel

... Appellant/Accused No.1

..Versus..

State Rep.by

The Deputy Superintendent of Police,
Maranda Halli Police Station,
Maranda Halli,
Dharmapuri District

(Crime No.480 of 2009)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the Judgment and conviction dated 07.06.2013 made in S.C.No.101 of 2011 on the file of Additional District and Sessions Judge, Dharmapuri and prays to set aside the same.

For Appellant : Mr.D.Selvaraju

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

JUDGMENT

The convicted first accused is the appellant herein.

2. This Criminal Appeal has been preferred by the first accused against the conviction and sentence passed in S.C.No.101

of 2011 for the offence punishable under Sections 306 and 498(A) of I.P.C and for the offence under Section 306 of I.P.C, he was sentenced to 5 years Rigorous Imprisonment and also fine of Rs.2000/- in default to undergo Rigorous Imprisonment for 6 months and for the offence under Section 498(A) of I.P.C, he was sentenced to 2 years Rigorous Imprisonment and also fine of Rs.1000/- in default to undergo Rigorous Imprisonment for 3 months.

3. The case of the prosecution in brief is as follows:-

i) The first accused/ A1 married the deceased Ambigeswari on 13.11.2005. The second accused/ A2 is the mother of the A1. At the time of marriage, the parents of the deceased Ambigeswari had given 10 sovereigns of gold and Rs.60,000/- as demanded by the accused. Due to the marriage with A1, the deceased got one female child namely Mathumitha. After 7 months of the birth of the Mathumitha, the deceased and her daughter were sent to the accused house by putting usual gifts to Mathumitha.

ii) After that, the accused harassed and sent the deceased to her parents house to get money. The parents of the deceased had given Rs.20,000/- and sent back the deceased to the accused house. The accused again demanded amount. So, the parents of the deceased had again given Rs.20,000/- and sent back to the deceased to the accused house. After that, they had given 10 sovereigns of jewels to the deceased. Again, after 6 months, the accused sent the deceased to the parents house. So, a complaint was given to the All Women Police Station Pennagaram and the matter was amicably settled before the Panchayathars and the deceased was sent back to the accused house.

iii) Later on, P.W.1, the Village Administrative Officer, came to know that, the deceased and her daughter had died due to burn injuries. Then, he went to the house of the accused and seen that the deceased and her daughter died due to burn injuries. P.W.1 had given the complaint with respect to the occurrence to the Marandahalli Police Station. After receiving the complaint from P.W.1, the police registered the case under Section 174 of Cr.P.C and the police sent the copy of the F.I.R to P.W.10, RDO who after receiving the FIR went to the occurrence spot at about 5.30 p.m. P.W.10 had seen the body of the deceased and her daughter inside the locked door. Then he directed to open the gate and then made inquest on the body of both the deceased. At the time of inquest he examined the witnesses Lakshmanan @ Chickkannan, Sowdammal and the accused A1 Vadivel and A2 Erammal and recorded their statements. He prepared Ex.P9 inquest report.

iv) P.W.11, the Investigation Officer in this case received the F.I.R under Section 174 of Cr.P.C and he went to the occurrence spot on 24.10.2009 and prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P11) in the presence of the attesting witnesses. He also recovered 10 litre plastic can from the occurrence spot in presence of the witnesses. After receiving the inquest report from P.W.10 on 06.11.2011, he altered the section of offence under Section 174 of Cr.P.C into 498(A) and 304(b) of I.P.C and prepared the alteration report Ex.P13. Then he examined the witnesses and recorded their statements. After that, on 06.11.2011 at about 16 hours he arrested the accused and sent them to Judicial custody. After completion of the investigation, he filed a charge sheet against the accused A1 and A2 under Section 498(A) and 304(b) of I.P.C.

4. To prove the charges, prosecution examined P.W.1 to P.W.11 and Exhibits P1 to P15 were marked and on the side of the defence D.W.1 Sub-Inspector of Police was examined and Exhibits D1 to D4 were marked and M.O.1 was also marked.

5. On consideration of both oral and documentary evidence, the Sessions Judge acquitted the A2-mother of the first accused of charges under Sections 304 (B), 306 and 498(A) I.P.C, however, convicted A1 in respect of the charge under Sections 306 and 498(A) I.P.C. Challenging the said conviction and the sentence awarded, as stated supra, the appeal has been filed.

6. The learned counsel for the appellant would submit that the learned Sessions Judge ought not to have convicted the appellant, since it was held that there was no demand of dowry or harassment by the appellant. According to the learned counsel for the appellant, the learned Sessions Judge erred in holding that the deceased had suspicion over the accused that he was having illegal intimacy, which would amount to cruelty, so as to drive the deceased to commit suicide and failed to note that the deceased was in the habit of attempting suicide on frustrations and depression, which was established in Ex.D2.

7. Points for determination are that Whether the prosecution has proved the charges laid against the accused under Section 304(b), 306, 498(A) I.P.C beyond reasonable doubt?

ii) Whether the conviction held under Section 498(A) and 306 I.P.C is sustainable in law?

iii) Whether the sentence passed under Section 498(A) and 306 I.P.C are excessive?

8. Heard both sides and perused the records.

9. It is seen from the records that the Criminal law was set into motion by filing of the complaint by the P.W.1,V.A.O. His Assistant was examined as P.W.2. P.W.3 and P.W.5 are the father and brother of the deceased Ambigeswari while, P.W.6 and P.W.7 are the villagers, who had participated in the panchayat conducted between the first accused and the deceased in respect of matrimonial disputes. P.W.8 is the medical evidence while, P.W.9 to P.W.11 are the police witnesses who deposed regarding the discharge of official duty in registration of the F.I.R and conducting the investigation and filing of the charge sheet.

10. It remains to be stated that D.W.1 is the Sub Inspector of Police, who had registered the complaint, Exhibit P15 on 18.07.2009 given by Ambigeswari,victim girl and also the complaint Exhibit D1 given by the first accused while, Exhibit D2 and D3 are the statements given by the victim Ambigeswari and the first accused Vadivelu before the police and the decision arrived therein in respect of the said complaint is marked as Exhibit D4.

11. The evidence of P.W.3 and P.W.4 is clear and cogent to the extent that initially, there was a demand of money for a sum of Rs.20,000/- and 3 months thereafter, another Rs.20,000/- had been demanded and 3 months thereafter another 10 sovereigns and some amount had been demanded for which, the parents of the deceased had given 10 sovereigns and again after six months, there was another demand which resulted in filing of Exhibit P15, complaint given by the victim, Ambigeswari herself before the competent jurisdictional Police station. As could be seen, Exhibit P15, as spoken to by D.W.1, assumes significance.

12. It also remains to be stated that the evidence of P.W.3, P.W.4, P.W.5-brother would go to show that after Exhibit P15, complaint before the Police Station a compromise was arrived therein and the matrimonial relationship between the deceased Ambigeswari and the first appellant Vadivelu was smooth for some time. However, again, Ambigeswari came back and consequently, there was a complaint before the Dhrowpathy Amman Kovil Panchayat and thereupon on the mediation of village elders, Ambigeswari went and joined the appellant/accused and within 15 days, she committed suicide by self-immolation.

13. In the cross examination of P.W.3, P.W.4, P.W.5, P.W.6 and as well as the police witnesses P.W.9, P.W.10, P.W.11, there was an elicitation of the fact that the said Ambigeswari, the victim girl had entertained doubt over the conduct and character of her husband and she had developed a suspicion that her husband was having an illicit relationship with a girl in Chennai and that had led to the matrimonial dispute. The attention of this Court was also drawn to the fact that after Exhibit P15, Ex-D1 complaint was given by the appellant, which was marked through D.W.1 wherein, he had stated that the deceased lived for only one day after the compromise and she was not feeling comfortable and she left the matrimonial home and in Exhibit D2, she had narrated about the compromise and after the family counselling given by the police in the Police Station and she has also stated that there were frequent disputes and she was going out of the matrimonial home and as she was depressed, she stated that she did not want to live with her husband and she had also given an undertaking that she will not make any attempt for any suicide hereafter and she will lead a peaceful life with her husband and the said statement was given by the deceased on 22.08.2009. However, the fact she committed suicide by self immolation 24.10.2009 within a period of eight weeks assumes significance.

14. On consideration of the answers elicited in the cross examination and also placing reliance upon Ex.P15 complaint given by the victim Ambigeswari on 18.07.2009 and her statement before the police dated 22.08.2009 under Exhibit D2, the Sessions Judge has rendered a finding that there is no demand of dowry on the part of the second accused as well as the first accused accordingly, held that both A1 and A2 (mother of the A1) have not committed any offence under Section 304(B) of I.P.C and accordingly, acquitted them.

15. On perusal of the evidence of the P.W.3 and P.W.5, the father and brother of the deceased respectively, they have stated that there was demand of dowry. On the contrary the police witnesses have stated that the details of the demand of dowry as spoken to by P.W.3 and P.W.5 are found to be rather material contradictions with that of the evidence of the police witnesses. It remains to be stated that the prosecution has failed to adduce any positive evidence to show that the first accused has induced or abetted the suicide of the victim Ambigeswari. On the contrary it appears from the cross examination of P.W.3, P.W.4, P.W.5, private prosecution

witnesses and P.W.10 revenue witness and P.W.9 and P.W.11 police witnesses that the said Ambigeswari had made suicide attempts two times prior to the successful attempt made on 24.10.2009 as could be seen from the cross examination of the P.W.9, P.W.10 and P.W.11. It remains to be stated that, as could be seen from Exhibit D1 and statement given by the first accused to the Sub-Inspector of Police, All Woman Police Station wherein it is categorically stated that she is in the habit of attempting suicide and asked to advise her to come and live with him and the said plea has also been found to be endorsed by none other than by the victim girl Ambigeswari as reflected under Exhibit D2 statement given by her to the police, All Woman Police Station on 22.08.2009.

16. As observed above, she has categorically stated that hereafter she will not make any suicide attempt at any point of time. However, within eight weeks or so, she committed suicide resulting in filing in this case and thus in view of the answers elicited from the private prosecution witnesses regarding the suicide tendency and hypersensitive nature of the deceased in the cross examination of P.W.3 and P.W.5 coupled with the answers elicited from the revenue witnesses P.W.10 and the police witnesses P.W.9 and P.W.11 along with the statement of the victim herself on 22.08.2009 under Exhibit D2, this Court is of the considered view that the defence has successfully rebutted presumption that arose in favour of prosecution under Section 113(A) of the Indian Evidence Act.

17. In view of the overwhelming statements of revenue and police witnesses with regard to the suicidal tendency and documentary evidence Ex-D3, this Court is of the considered view that though initially based upon the private prosecution witnesses the trial Court has rightly come to the conclusion that it will raise a presumption as contained under Section 113 (A) of the Evidence Act, however, on proper appreciation and screening and scrutiny of the answers elicited, as stated supra, this Court is of the considered view that the deceased Ambigeswari was hypersensitive and had made suicide attempts on earlier occasions and as could be seen from the statement of the panchayat or before the R.D.O P.W.10 and his finding contained therein and also in view of the statement given by victim herself before the police as could be seen under Exhibit D2, this Court holds that there is no positive evidence on record to show that the A1 has abetted or instigated the deceased to commit suicide in support of the charge under Section 306 I.P.C beyond reasonable doubt. In such view of the matter, the conviction and sentence passed by the trial Court under Section 306 I.P.C needs interference.

18. Accordingly, the conviction and sentence passed by the trial Court under Section 306 I.P.C against A1 is hereby set aside after going through the evidence of P.W.3 and P.W.4 and also the statement made by the deceased under Ex.D2 and Exhibit P15, the conviction laid by the trial Court in respect of 498(A) I.P.C is found to be just and proper and quantum of the sentence awarded therein namely 2 years Rigorous Imprisonment appears to be in excessive, on facts and circumstances and the same is reduced to 1 year and this Court has no hesitation to confirm the said conviction under Section 498(A) against A1, the appellant herein. Accordingly, the conviction is confirmed and sentence is reduced to 1 year Rigorous Imprisonment and fine amount awarded by the learned Sessions Judge is kept intact. While, the conviction and sentence passed under Section 306 I.P.C against A1 is set aside. Accordingly, this Criminal Appeal is partly allowed. 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. The period of custody already undergone is ordered to be given set off.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Dharmapuri.
2. The Public Prosecutor (Crl.Side),
High Court, Madras.
3. The Judicial Magistrate,
Palacode.
- 4.-Do- Thro The Chief Judicial Magistrate,
Dharmapuri.
- 5.The Superintendent,
Central Prison, Vellore.

6.The Deputy Superintendent of Police,
Maranda Halli Police Station,
Maranda Halli, Dharmapuri District.

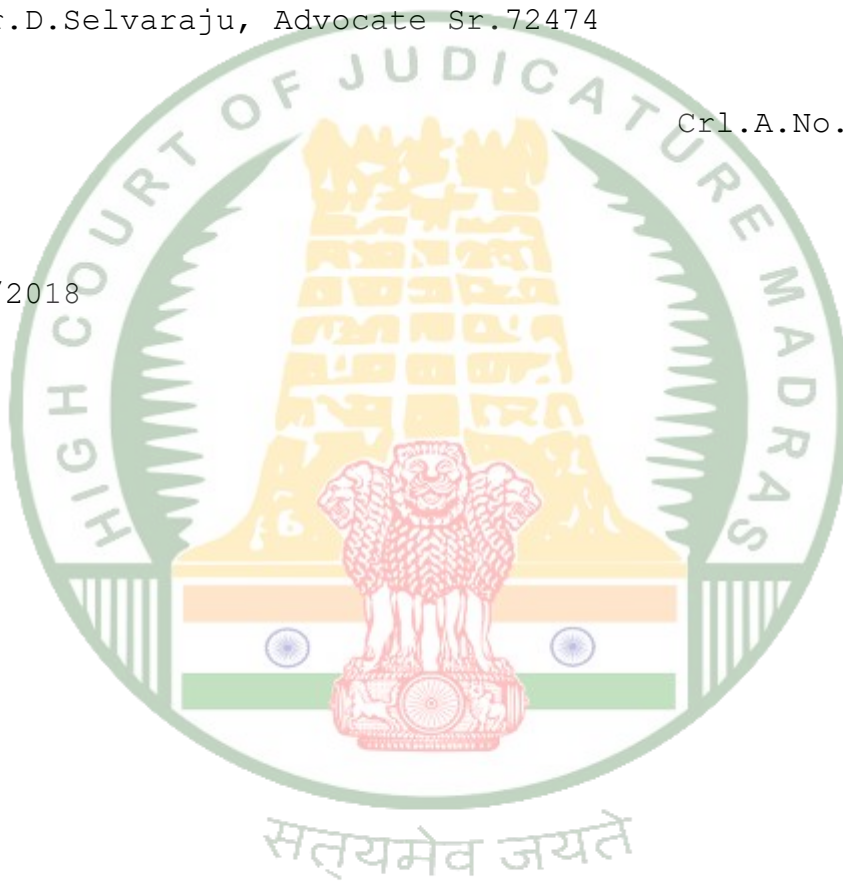
Copy to

The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.D.Selvaraju, Advocate Sr.72474

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srg 14/11/2018



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