



BAIL SLIP

The Appellant/Accused viz., Thimmaraj, S/o.Venkatesappa, Venkatesappa S/o. Munivenkatappa, Savithiramma W/o. Venkatesappa and Narayanappa S/o. Munivenkatappa were directed to be released on bail as per order dated 29/05/2003 in MP. 1 & 2/2013 in Crl.Rc.691/13 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 05.12.2018
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
CRL.R.C.No.691 of 2013

1.Thimmaraj
2.Venkatesappa
3.Savithiramma
4.Narayanappa

.. Petitioners

Vs

State Rep. by
The Inspector of Police,
All Women Police Station,
Hosur.
(Crime No.17 of 2006)

.. Respondent

Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C., praying to against the judgment passed by the learned Principal Sessions Judge, Krishnagiri, dated 14.03.2013 in Crl.A.No.42 of 2006, confirming the sentence and conviction passed by the learned Judicial Magistrate, No.II, Hosur in C.C.No.23 of 2007 dated 28.04.2008.

For Petitioners : Mr.C.R.Malarvannan
For Respondent : Mrs.Kritika Kamal, GA (Crl.
Side)

O R D E R

On the complaint (Ex.P1) lodged by Rukmani (PW1), Amutha (PW10), Special Sub-Inspector of Police, Hosur, All Women Police Station registered a case on 16.11.2006 in Crime No.17 of 2006 for the offences under Section 498(A) and 506(i) IPC and prepared the printed FIR (Ex.P2). The investigation of the case was taken over by Jayaraman (PW11), who examined the witnesses and filed Final Report in C.C.No.23 of 2007 before the Judicial Magistrate No.II, Hosur for the offences under Section 498(A) and 506(i) IPC and Section 4 of the Dowry Prohibition Act r/w 109 and Section 34 IPC against Thimmaraj (A1), Venkatesappa (A2), Savithiramma (A3) and Narayanappa (A4). On the



appearance of the accused, the provisions under Section 207 Cr.P.C was complied with and charges for the aforesaid offences were framed against four accused. When questioned, the accused pleaded 'not guilty'.

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2.To prove the case, the prosecution examined 11 witnesses and marked two exhibits. When the accused were questioned under Section 313 Cr.P.C on the incriminating evidence appearing against them, they denied the same. No witness was examined nor any document marked on behalf of the accused.

3.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 28.04.2008 in C.C.No.23 of 2007 acquitted the accused under Section 506(i) IPC, but convicted them under Section 498(A) IPC and Section 4 of the Dowry Prohibition Act and sentenced them as follows:

a)Under Section 498(A) IPC - One year rigorous imprisonment and fine of Rs.500/- in default to undergo three months simple imprisonment. b)Section 4 of the Dowry Prohibition Act - Six months rigorous imprisonment and fine of Rs.500/- in default to undergo three months simple imprisonment.

4.Challenging the conviction and sentence, the accused preferred Crl.A.No.42 of 2008 in the Court of Session and the same has been dismissed on 14.03.2013, challenging which, the accused are before this Court.

5.Heard Mr.C.R.Malarvannan, learned counsel for the accused and Mrs.Kritika Kamal, learned Government Advocate (Crl.Side).

6.Before advertng to the arguments advanced by either side, it may not be out of place to refer to the following passage from the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004) 7 SCC 659.]

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,



recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chandv. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

7. Therefore, this Court cannot reappreciate the evidence under Section 397 r/w 401 Cr.P.C. as if, it is a court of second appeal.

8. It is the case of the prosecution that, Rukmani (PW1) married Thimmaraj (A1) on 19.05.2002 and for four years, they lived happily in the joint family with Venkatesappa (A2) and Savithiramma (A3), the parents of Thimmaraj (A1); Narayanappa (A4) is the brother of Venkatesappa (A2); after four years, the accused started demanding a mini auto rickshaw from Rukmani (PW1) and asked her to get it from her parents; Rukmani (PW1) conveyed this demand to her father Narayanappa (PW2), who expressed his inability; when Rukmani (PW1) told the accused about the inability of her parents to get the mini auto



rickshaw, she was beaten and was sent back to her parental home with the warning that, she should not return to the matrimonial home, without the mini auto rickshaw; Rukmani (PW1) initially, gave a complaint to the Police on 04.10.2006, on which, no action was taken; again, she went to the Police Station and gave a statement on 16.11.2006, based on which, a case in Crime No.17 of 2006 was registered and Charge Sheet was filed as stated above.

9.Mr.Malarvannan, learned counsel for the accused contended that, even according to the evidence of the prosecution witnesses including Rukmani (PW1), the couple were living happily for four years after marriage and the family of the accused were affluent. Therefore, Mr.Malarvannan, learned counsel for the accused submitted that, the allegation that the accused demanded mini auto rickshaw from Rukmani (PW1), cannot be true. He contended that the couple were childless for four years, for which, Rukmani (PW1) took treatment under Dr.Premavathi, on account of which, she conceived, but aborted the fetus without the knowledge of the accused. When this was questioned by the accused, a false case has been foisted. In support of this plea, Mr.Malarvannan, learned counsel for the accused placed reliance on the answer given by Anitha (PW10), the Sub Inspector of Police, in the cross-examination to the effect that during the investigation, she came to know that PW1 had under gone abortion in Velnath Nursing Home in Hosur.

10.Apart from this statement by the Sub-Inspector of Police, there is no other material on record for this Court to draw an inference that Rukmani (PW1) underwent abortion.

11.It is a trite law that results of investigation is not legal evidence. (vide the Supreme Court [SCC Vijender vs. State of Delhi (1997) 6 SCC 171])

12.Of course, suggestions have been put to Rukmani (PW1) and other witnesses on this aspect, which they have denied. Had the defence examined Dr.Premavathi or marked any document in support of this plea, then there is a scope for this Court to agree with the submission of Mr.Malarvannan, learned counsel for the accused.

13.It is true that the prosecution witnesses have stated in the cross-examination that the accused are affluent than the family of Rukmani (PW1) and that they have agriculture lands and tractor for tilling. However, that cannot lead this Court to infer that there should not have been any demand by them for buying mini auto rickshaw.

14.Economic affluence is not an insurance against human

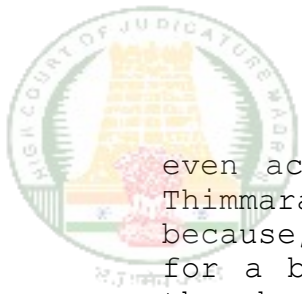


greed. In fact, in most cases, human greed catalyzes the affluent than the poor for monetary aggrandizement. Just because, there was no demand for a period of four years after marriage, one cannot conclude that the accused would not have demanded the mini auto rickshaw from Rukmani's family. Rukmani was examined as PW1 and in her evidence, she has stated that after marriage, she was living happily with her husband and the demand for getting mini auto rickshaw started only thereafter and when she refused, she was beaten and sent back to her natal home for good.

15. It was suggested to her that, after marriage, Timmaraj (A1) lived with her in her natal home and since he was not respected, he set up a separate house in Sarjapuram with Rukmani (PW1), which she denied. Narayanappa (PW2) and Lakshmidiammal (PW3), the parents of Rukmani (PW1), have corroborated the evidence of Rukmani (PW1) and have stated that the accused started torturing Rukmani (PW1) for not getting the mini auto rickshaw.

16. In fact, in the cross-examination of Narayanappa (PW2), he has specifically stated that, on one occasion, he even found injuries on the body of his daughter, but did not take her to the Doctor for treatment for want of money and instead, applied native oils on the wounds. A reading of the evidence of Narayanappa (PW2) is indeed heart-rending. He has stated that his daughter approached him and asked for buying a mini auto rickshaw, for which, he told her that he does not have the means. Rukmani (PW1) in her evidence has stated that when she approached her father, he told that he does not have money at all and that, he has to take care of her (PW1's) siblings, viz., two girls and a boy. It is obvious to this Court that, Narayanappa (PW2) is a poor patient and is not a man of means. Narayanappa (PW2) has stated that, he even met Thimmaraj (A1) and explained to him that he does not have the money to buy the mini auto rickshaw. That apart, it is in evidence that Narayanappa's (PW2) family had migrated from Andhra Pradesh and settled in Krishnagiri. Their Mother tongue is Telugu and Rukmani (PW1) has studied up to only 3rd standard. She has stated that the statement given by her was written as complaint (Ex.P1). All this clearly indicates that, she hails from an economically downtrodden family of farm workers.

17. Mr. Malarvannan, learned counsel for the accused submitted that, though Rukmani (PW1) had denied that after marriage, she lived with Thimmaraj (A1) in her natal home, Govindappa (PW4), the maternal uncle of Rukmani (PW1) has admitted in the cross-examination that after marriage, Thimmaraj (A1) lived in the house of his wife. In the opinion of this Court, this statement of Srinivasan (PW5) cannot have the effect of demolishing the substratum of the prosecution case, because,



even according to the prosecution witnesses, Rukmani (PW1) and Thimmaraj (A1) were living happily for four years. Thus, just because, Thimmaraj (A1) had lived in the house of Rukmani (PW1) for a brief period after marriage, that can have no bearing on the demand for getting mini auto rickshaw, that was raised by the accused subsequently.

18.It is the specific case of Rukmani (PW1) that she was beaten by the accused physically and was driven away to her parental home.

19.In such view of the matter, this Court has no sound reasons to unsettle the findings of fact by the trial Court and the appellate Court that Thimmaraj (A1), Venkatesappa (A2) and Savithiramma (A3) demanded mini auto rickshaw from the family of Rukmani (PW1), subjected her to cruelty for not conceding to their request and drove her to her natal home.

20.Hence, this Court finds sufficient evidence to sustain the findings of guilty under Section 498(A) IPC, qua Thimmaraj (A1), Venkatesappa (A2) and Savithiramma (A3) and not against Narayanappa (A4), the brother of Venkatesappa (A2), since all the witnesses have stated that he was living separately. As regards, Section 4 of the Dowry Prohibition Act, the demand for mini auto rickshaw has not been made either at the time of marriage or soon thereafter, in connection with the marriage. At the risk of repetition, the evidence unmistakably shows that Rukmani (PW1) and Thimmaraj (A1) were living happily for four years after marriage and only thereafter, the accused started demanding the mini auto rickshaw from her family.

21.Hence, the conviction and the sentence of the accused for the offence under Section 4 of the Dowry Prohibition Act cannot be sustained and accordingly, the same is set aside.

22.In the result, this Criminal Revision is partly allowed. Coming to the sentence, Mr.Malarvannan, the learned counsel for the accused submitted that Venkatesappa (A2) and Savithiramma (A3) are aged about 73 and 63 years respectively, therefore, some leniency may be shown with regard to the sentence imposed on them. He also submitted that, they were in custody after arrest for a period of 15 days.

23.Accepting the statement, the sentence of one year rigorous imprisonment under Section 498(A) is reduced to three months rigorous imprisonment for Venkatesappa (A2) and Savithiramma (A3).

24.In view of the above discussion,
a)the conviction and sentence slapped on Narayanappa (A4)



are set aside and he is acquitted of all the charges;
b)all the accused are acquitted of the charge under Section 4 of the Dowry Prohibition Act;
c)the sentence of one year rigorous imprisonment and fine of Rs.500/- imposed on A1 for the offence under Section 498(A) IPC stands confirmed;
d) the sentence of one year rigorous imprisonment imposed on Venkatesappa (A2) and Savithiramma (A3) under Section 498(A) IPC is reduced to three months rigorous imprisonment and the accused is entitled to set off under Section 428 Cr.P.C.

25.The trial Court is directed to secure Thimmaraj (A1), Venkatesappa (A2) and Savithiramma (A3) and commit them to prison for undergoing the remaining period of sentence, if any.

In the result, this Criminal Revision is partly allowed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

TO

1. The Judicial Magistrate No. II,
Hosur.
2. the Principal Session Judge,
Krishnagiri (for Information).
3. do the Chief Judicial Magistrate,
Krishnagiri (for Information).
- 4.The Inspector of Police,
All Women Police Station,
Hosur. (Crime No.17 of 2006)
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr. N.Mohideen, Advocate, S.R.No. 83389

CRL.R.C.No.691 of 2013

KK(CO)
GN(21/12/2018)