

BAIL SLIP

The petitioners/Accused chinnaponnu W/o. Palani Gounder ,
Susheela W/o. Vadivelu, Muthayee W/o.Govindasamy, Vijaya
W/o.munusamy were directed to be released on bail as per order
of this court dated 22.12.2010 and made in Crl MP No.1/2010 in
Crl.RC. No.1046 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
12.06.2018	19.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1046 of 2010

1.Chinnaponnu
2.Susheela
3.Muthayee
4.Vijaya

... Petitioners

..Vs..

State Rep.by
The Sub Inspector of Police,
All Women Police Station,
Dharmapuri.

... Respondent

Crime No.2/2001

Criminal Revision case filed under Section 397 r/w 401 of
Cr.P.C. to call for the records pertaining to the order dated
30.07.2010 in C.A.No.30 of 2009 on the file of Principal
Sessions Judge, Dharmapuri confirming the order dated 27.11.2009
in C.C.No.259 of 2001 on the file of the Judicial Magistrate-II,
Dharmapuri and set aside the same.

For Petitioners : Mr.M.Selvam

For Respondent : Ms.S.Thankira
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Petition has been filed against the order passed by the Principal District Judge, Dharmapuri confirming the order of conviction and sentence passed by the Judicial Magistrate No.II, Dharmapuri, for an offence under Section 498 (A) of IPC. The petitioners are A-1, A-4, A-6 & A-8.

2.The petitioners along with other accused persons were charged for an offence under Sections 147, 148, 355, 354 r/w 149, 323, 498 (A) of IPC and Section 4 of the Dowry Prohibition Act. The other accused persons were acquitted by the Trial Court. The petitioners were acquitted insofar as the other charges are concerned except for an offence under Section 498 (A) of IPC for which they were sentenced to undergo Rigorous Imprisonment for 1 year and fine of Rs.500/- and on default 3 months of Simple Imprisonment. Along with the petitioners, A-2 and A-10 were also found to be guilty, but however since they died during the pendency, the criminal proceedings got abated insofar as A-2 and A-10 are concerned. This order of the Trial Court was confirmed in appeal and aggrieved by the same the petitioners have approached this Court by way of filing this Criminal Revision Petition.

3.The case of the prosecution is that A-1 who is the mother-in-law, A-2 who is the father-in-law of PW-2 and also A-3, A-5, A-7, A-9, A-11 and A-12 who are the sons of A-1, A-2 and A-4, A-6, A-8 and A-10 who are the daughters-in-law of A-1 & A-2 and A-13 to A-15 who are the henchmen of A-2 all, formed into an unlawful assembly and on 12.02.2001 at about 12.00 O' clock forcibly took PW-2 to Thoppiyar Dam and tonsoured her head against her will and removed her dress and burnt her tongue with a red hot needle and thereafter removed her Thali and made her husband PW-7 to again tie a Thali. It is the further case of the prosecution that PW-2 and PW-7 got married 7 years prior to the date of occurrence and suspecting her fidelity she was deserted. There was also a demand of dowry by A-1 and A-2 and she was forced to live with her parents for sometime. After 2 months staying with the parents, she was asked to return back to the matrimonial home. After PW-2 returned home, A-1 to A-12 on the guise that PW-2 was possessed by an evil spirit forced her to undergo a ceremony in order to remove the evil spirit. As a result of the same, the above said incident happened on 12.02.2001.

4.On a complaint given by PW-2, a case was registered in Dharmapuri All Women Police Station in Crime No.2 of 2001. After investigation the Final Report was laid against 15 persons and the same was taken on file in C.C.No.259 of 2001 by the Magistrate Court. The prosecution examined 19 witnesses and

marked 11 exhibits and also 23 material objects.

5.Both the Courts below after satisfying itself that the prosecution has proved the case beyond reasonable doubts, convicted the petitioners for an offence under Section 498 (A) of IPC. The learned counsel for the petitioner would submit that there was a delay of 5 days in registering the FIR and the very delay vitiates the case of the prosecution. The further submission made by the learned counsel for the petitioner is that except for the evidence of PW-2 there was no other eye witness to the occurrence and the members belonging to Kalaimagal Mahalir Mandram interfered and gave a false complaint over an incident which is a normal ceremony that is regularly done in the village. The learned counsel for the petitioner would further contend that when the benefit of doubt has been given to all the other accused persons, the same should have been extended in favour of the petitioners also. The learned counsel would further contend that based on a complaint lodged by PW-1 who is a rank third party, the law should not have been set in motion more particularly for an offence under Section 498 (A) of IPC. Finally, the learned counsel would contend that both the Courts below failed to take note of the vital contradictions made by the witnesses during trial.

6.The learned Government Advocate (Criminal Side) after taking through the evidence would contend that there is absolutely no merits in this Criminal Revision Petition and there is no ground to interfere with the orders passed by the Courts below.

7.This Court exercising its jurisdiction under Section 397 and 401 of Cr.P.C will have to satisfy itself as to the correctness, legality or propriety of the finding and the sentence imposed by the Courts below.

8.On going through the entire evidence on record it can be seen that there was in fact an incident on 12.02.2001 at 12.00 O'clock in the night where there was tonsuring of the head of PW-2. Apart from PW-2, who is the victim, stating about the incident during trial, PW-7 her husband also in his evidence clearly states about this tonsuring ceremony. Therefore, it is clear that such an incident took place on 12.02.2001 and what is to be seen is whether this ceremony took place against the wishes of PW-2 by forcing her and whether her tongue was burnt with the red hot needle which constituted to an act of cruelty against her.

9.In this case PW-1 who was the leader of Kalaimagal Mahalir Mandram was approached by PW-2 and her father on 15.02.2001 and was narrated about the incident. This incident

was thereafter informed to another member of the Kalaimagal Mahalir Mandram who was examined as PW-3 and thereafter PW-1, PW-3 along with one Santhi and the victim PW-2 went to the All Women Police Station and a complaint was lodged on 17.02.2001 which was marked as Ex.P-7 and an FIR was registered on the same day which was marked as Ex.P-8.

10.The evidence of PW-1 makes it clear that PW-2 and her father approached her and narrated to her about the incident pursuant to which complaint was lodged which was signed by PW-1. Neither PW-1 nor PW-3, have any axe to grind against the accused persons and they have clearly maintained their stand through out the evidence about PW-2 and her father approaching them and complaining to them about the incident pursuant to which the law was set in motion.

11.The delay in giving the complaint and registering the FIR does not have any bearing on the case of the prosecution since apart from the ceremony that took place on 12.02.2001, PW-2 was also brought to Sandiranallur Mariamman Temple on 14.02.2001 and only hereafter on 15.02.2001 PW-2 and her father had approached PW-1. It must be kept in mind that the incident had taken place in a remote village and till 14.02.2001, PW-2 was under the control of the accused persons and thereafter she has approached for help to the Mahalir Mandram who ultimately took her to the All Woman Police Station.

12.It is not as if in every case where there is a delay in registering the FIR, the same will vitiate the case of the prosecution. Where there are sufficient reasons given for the delay in registration of the FIR, the Court can always take that into consideration. In the present case there are sufficient reasons as to why the FIR came to be registered only after 5 days from the date of incident.

13.PW-2 the victim and PW-4 the father of the victim have clearly spoken about the incident. The entire cross examination goes on the footing that tonsure of head is a normal ceremony that takes place in the village and no criminality can be ascribed to the incident. Therefore, the prosecution has proved beyond reasonable doubt that tonsuring of head of PW-2 had taken place and the evidence of PW-2, PW-3 and PW-7 collaborates the said fact.

14.PW-2 in her evidence has clearly named the petitioners herein and has also spoken about the cruelty meted out by them to her. The first petitioner who is the mother-in-law has taken a major part in the entire incident and she had forced the tonsuring of the head of PW-2. That apart, PW-2 has specifically named during evidence the second, third and fourth

petitioners who were the once who forcibly burnt her lower tongue with a red hot needle. This wound in the tongue is spoken to by PW-19 and the Wound Certificate has been marked as Ex.P-11. From all these materials it is clear that the tonsuring of head and the burning of the tongue with a hot needle had taken place against PW-2 who is the victim.

15. In cases of this nature, if the Court is satisfied with the evidence of the victim, that itself can form the basis of conviction in a criminal case. It will be useful to remind the first principles on appreciation of evidence which is clearly spelt out under Section 134 of the Indian Evidence Act which specifically says that no particular number of witnesses shall in any case be required for the proof of any fact. In other words it is the quality and not the quantity of evidence that is material for deciding a case. The test is that the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. Useful reference can be made in this context to the judgments of the Apex Court in *Josephy .v. State of Kerala* reported in [2003 SCC (Cr1) 356] ; and *Kunju .v. State of Tamil Nadu* reported in [AIR (2008) SC 1381]. The evidence of PW-2 clearly satisfied these requirements.

16. It is an unfortunate case where a hapless lady in the guise of a ceremony was subjected to extreme cruelty by tonsuring her head and by burning her tongue. No one has the right to force into another person any act in the name of ceremony. A ceremony which by its nature causes pain and suffering and results in cruelty to a person, can never be justified even if it had been followed for a very long-time. A ceremony which affects the dignity of a person and which on the face of it is inhuman, the same offends Article 21 of the Constitution of India and the persons who commit such acts in the name of ceremony will have to be dealt with in accordance with law and stringent punishment must be imposed. A strong message must be sent to the society that cruel acts in the name of ceremony will not be tolerated and will be dealt with severely by Courts. In this case a group of persons came to the conclusion among themselves that this hapless lady [P.W-2] was possessed with evil spirit and they decided to force her and subject her to cruelty by tonsuring her head, make her walk without clothes and burn her tongue with red hot needle and there by she was subjected to inhuman treatment. It is also unfortunate that the defence wanted to project this grotesque act as a routine ceremony. Its time that Courts send a strong message to the society that such grotesque acts will not be tolerated and Courts will not turn a blind eye when such incidents are brought to the notice of the Court.

17. In the instant case the petitioners are the mother-in-law and the sisters-in-law of PW-2 and they all fall within the expression 'relative of the husband' and there is clear evidence of their involvement in the cruelty committed upon PW-2 the victim. This incident will leave a deep scar in the mind of the victim. This Court does not find any illegality or impropriety in the finding of the Courts below with regard to the conviction of the petitioners for an offence under Section 498 (A) of IPC.

18. Insofar as the punishment is concerned, the Courts below imposed a punishment of one year Rigorous Imprisonment to each of the petitioner and a fine of Rs.500/- each and in default 3 months Simple Imprisonment. The incident has taken place in the year 2001 and it is almost 17 years since the incident took place. All the petitioners are women and the first petitioner by now must be a senior citizen and petitioners 2 to 4 must also be in their middle age having their own family. This Court therefore is of the opinion that the punishments imposed on the petitioners should be modified. Insofar as the term of the imprisonment is concerned, it stands modified from 1 year to the term already undergone by the petitioners. Each of the petitioner is directed to deposit a compensation of Rs.15,000/- [Rupees Fifteen Thousand Only] before the Judicial Magistrate No.II, Dharmapuri in the account of C.C.NO.259 of * 2001 within 8 weeks from the date of receipt of the copy of this order and on such deposit, PW-2 victim is entitled to withdraw the same. If in case of any default on the part of the petitioners to deposit the compensation amount within the time stipulated by this Court, there shall be default sentence of 3 months Simple Imprisonment. The fine imposed by the Courts below is also confirmed.

19. With the above modification of the sentence alone, the Criminal Revision Petition is partly allowed.

Sd/-

Assistant Registrar(CO)

Dated: 28/06/2018

***Corrected as per order
dated 23.07.2018 in CRL.RC.1046 of 2010**

Sd/-

Assistant Registrar(CS II)

Dated : 24/07/2018

//True Copy//

Sub Assistant Registrar

Kp

To

1.The Principal Sessions Judge,
Sessions Court, Dharmapuri.

2.The Judicial Magistrate-II,
Judicial Magistrate Court,
Dharmapuri.

(For Complainance of the order
and report the same to the
High Court)

3.The Sub Inspector of Police,
All Women Police Station,
Dharmapuri.

4.The Public Prosecutor,
High Court Court,
Madras.

5.The Chief Judicial Magistrate,
Dharmapuri at Krishnagiri.

6. The Registrar General,
High Court, Madras.

7. The Registrar Judicial,
High Court, Madras.

Copy to

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

To be substituted the
order already despatched
on 09.07.2018

+1cc to Mr.M.SELVAM, Advocate, S.R.No. 38628

WEB COPY

Order in
Crl.R.C.No.1046 of 2010

MP(CO)
TR(28/06/2018)

GN(24/07/2018)