

Bail Slip

Mr.M.K.Perumal aged 38 S/O Kandasamy accused in S.C.No.224 of 2006 on the file of sessions Judge, Mahila Court, Salem was enlarged on bail by this Court order dt.03/04/2008 in MP.2 of 2008 in Crl.A.No.176 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 24.04.2018]

[Pronounced on : 24.08.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.176 of 2008

M.K.Perumal ... Appellant/Accused

... Vs ...

State rep. by:

The Inspector of Police,
Attayampatty Police Station,
Attayampatty,
Salem District.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C. against the judgment dated 25.01.2008 passed in S.C.No.224 of 2006 by the learned Sessions Judge, Mahila Court, Salem, convicting the appellant under Sections 498-A and 324 IPC and sentencing to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo three months rigorous imprisonment in each offences.

For Appellant : Mr.P.Rathinavel
For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side)

JUDGMENT

The appellant herein is the accused in S.C.No.224 of 2006 on the file of the learned Sessions Judge, Mahila Court, Salem, and he stands convicted for the offence under Section 498-A IPC and

sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo three months rigorous imprisonment and also convicted for the offence under Section 324 IPC and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo three months rigorous imprisonment and both the sentences were ordered to run concurrently. Aggrieved by the said conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem, the appellant has preferred this Criminal Appeal before this Court.

2. The respondent police has filed final report against the accused alleging demand of dowry thereby subjected the victim girl-P.W.1 to cruelty and when P.W.1 along with her father proceeding to the office of the Superintendent of Police to attend the enquiry in the complaint given against the accused, at that time, the accused, with knife, assaulted P.W.1 and caused injury on her on 05.09.2003.

3. The suggestive case of the defence is that the accused and P.W.1 belonged to different castes and they married out of love affair, which was not accepted by the father of P.W.1 and hence, three months after the marriage, the father of P.W.1 took her to his house and gave a complaint before the police station and thereafter, a false case has been foisted against him as if he has assaulted P.W.1 and in the name of dowry, he harassed P.W.1.

4. During the trial, it is also projected by the accused that P.W.1 has conducted second marriage for P.W.1 with one Arul Murugan and also marked certain documents in support of his contentions.

5. It is seen from records that P.W.1 has lodged Ex.P.1-complaint with the police and on the basis of the said complaint, the respondent police has registered a case in Crime No.361 of 2003 for the offences under Sections 498-A and 307 IPC and prepared First Information Report-Ex.P.4 and after completion of all the formalities, final report was filed against the appellant herein/accused for the offences under Sections 498-A and 307 of IPC.

6. Before the learned Sessions Judge, Mahila Court, Salem, to prove the charges, the prosecution examined P.Ws.1 to 7 and marked Exs.P.1 to P.7. On behalf of the defence, D.Ws.1 to 5 were examined and Exs.D.1 to D.7 were marked and M.O.1 was also produced. The accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances and he denied his complicity in the alleged crime.

7. The learned Sessions Judge, Mahila Court, Salem, on consideration of both oral and documentary evidence and relying upon the confession statement of the accused, has altered the charge from Section 307 IPC to 324 IPC and convicted the accused for the offences under Sections 324 and 498 (A) of IPC and sentenced him as stated above.

8. Aggrieved against the said conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem, the accused has preferred this criminal appeal.

9. Learned counsel appearing for the appellant/accused would contend that it is the specific suggestive case of the accused as a defence that since the father of P.W.1, namely, Palanichamy, who was examined as P.W.2, does not like his daughter to marry a person of different caste viz., the accused herein, he has given a false complaint and after filing of the final report and before commencement of trial, P.W.1/Gomathi was given in marriage to one Mr.Arul Murugan on 01.11.2006 at Tiruchengodu Sri Arulmuga Swamy Kovil and thereafter, reception was arranged in Tiruchengodu Agara Mahal Bajanai Madam Thirumana Mandabam and the learned Sessions Judge has not properly appreciated the proper legal position and prayed for setting aside the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem.

10. Learned Government Advocate (Crl.Side) made submissions in support of the judgment of the trial Court.

11. Heard both sides and perused the materials available on record.

12. The point for determination in this appeal is whether the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem, under Sections 324 and 498(A) IPC are sustainable in law.

13. The alleged victim girl/Gomathy was examined as P.W.1 and her father was examined as P.W.2 while one of her neighbours, who is said to have witnessed the alleged injury caused by the accused on the body of P.W.1 namely P.W.3 turned hostile. P.W.4 is the attestor of the observation mahazar while P.W.5 and P.W.7 are the police witnesses, who could depose regarding the registration of FIR and the conduct of the investigation and laying of the charge sheet. P.W.6, Dr.Rajambal deposed regarding the accident report given under Ex.P.7.

14. On behalf of the accused, the accused himself has entered into the witness box and examined himself as D.W.2 and

on summons, D.W.1-Manoharan, the Sub-Inspector of Police was examined and CSR issued by him was marked as Ex.D.2 in C.S.R.No.362 of 2002 and D.W.3-Shanmugam, who could depose that he has attended the second marriage of P.W.1/Gomathy with Arul Murugan. So also, D.W.4 is the Manager of the marriage hall where cash deposit was received for conducting of marriage reception of P.W.1 along with said Arul Murugan and the deposit receipts were marked as Exs.D.5 and D.6 while the Manager of the printing press was examined as D.W.5 and the marriage invitation of the marriage of P.W.1 with said Arul Murugan was marked as Ex.D.7.

15. As stated supra, the only independent witness P.W.3, who is said to have witnessed the alleged assault on P.W.1 by the accused has turned hostile. With regard to the alleged assault on P.W.1/Gomathy, in her cross-examination, she has categorically stated that while they are proceeding from their house to attend the enquiry in the office of the Superintendent of Police, the accused had assaulted her and caused injury. P.W.2 father of P.W.1, in his chief examination, has stated about the assault made by the accused on P.W.1. However, in the cross-examination, he could depose that the accused had assaulted only P.W.2 and while both P.W.2 and the accused are fighting with the hands, P.W.1/daughter of P.W.2 intervened and she has sustained injury and it is also stated that so is the statement given to the police. However, the Investigating Officer, who was examined as P.W.7 has denied such a statement made by P.W.2.

16. It remains to be stated that the Doctor, who examined P.W.1 immediately after the occurrence and said to have issued Ex.P.7-Wound Certificate, has clearly stated that such an injury is possible during the winding in the weaving machine and the nature of injury is classified as simple and treated as an out patient as could be seen from Ex.P.7. At this juncture, it is relevant to state that the alleged recovery of M.O.1-hacksaw blade from the scene of occurrence was on the evening of the same day. As pointed out by the learned counsel appearing for the appellant, the FIR was filed at 3.00 p.m. and Observation Mahazar in the scene of the crime said to have been prepared at 4.00 p.m. and recovery mahazar is said to have been made at 5.00 p.m., while the incident is said to have taken place in the morning. The hacksaw blade-M.O.1, which is said to have been lying there for a whole day, makes the theory of the prosecution more improbable. The attester of the Observation Mahazar P.W.4-Vijay would categorically depose that he has attested both the Observation Mahazar-Ex.P.2 and Seizure Mahazar-Ex.P.3. However, in the cross-examination, he had stated that around 4.00 p.m. on that date when P.W.2, P.W.1 and the accused were standing near the scene of occurrence, the property has been seized found to

be material contradiction with the version of P.W.5 Police Inspector, who is said to have made the alleged seizure and also causes dent in the prosecution theory. As observed earlier, while the First Information Report was registered at 3.00 p.m. and during preparation of Observation Mahazar at 4.00 p.m., the accused was very much present, as could be seen from the records and thereafter, the police appears to have developed the prosecution theory as if they have arrested the accused at 5.15 p.m., in a bus stop causes serious doubt as to the time and date of arrest besides caused serious doubt on the alleged seizure of M.O.1.

17. Taking into consideration the answer elicited by the Doctor P.W.6, who had issued the Accident Register-Ex.P.7 that such an injury is possible while doing winding in the weaving machine coupled with the material contradiction surrounding the alleged seizure, I am of the considered view that the evidence of P.Ws.1 and 2 regarding the alleged assault by the accused appears to be artificial and does not inspire the confidence of the Court to make the evidence of P.W.1 and P.W.2 as untrustworthy and unreliable for laying any conviction.

18. At this juncture, it remains to be stated that though P.W.1 and P.W.2 have categorically stated that the accused has demanded Rs.5,000/- on five counts, however, the same is found to be in material contradiction with P.W.5, who has stated that the accused had never made any such statement during the investigation thereby, this Court comes to the conclusion that the version of P.W.1 and P.W.2 in the witness box alleging demand of money and jewels and thereby they have been subjected to harassment appears to have been suffered from embellishment amounting to material contradiction with regard to material particulars of demand of dowry.

19. At this juncture, it is relevant to state that it is the suggestive case of the defence that P.W.1 and the accused loved each other and they married against the will and wish of P.W.2/father thereby P.W.2/father has developed enmity and hence, he has given a false complaint to the police and taken away P.W.1 from the house of the accused. In this connection, D.W.1-Manoharan, Sub Inspector of Police has categorically stated that there was a CSR in No.362 of 2002 given much earlier to the alleged FIR in the subject matter of this case wherein he has asked the accused not to interfere with the life of P.W.1 and accordingly, on the advice of the police, he also made an endorsement to that effect, which assumes significance, besides causing a serious dent in the theory of the prosecution. Further, pending trial, after committal to the learned Sessions Judge, according to the accused, P.W.1 has contracted second marriage with Arul murugan and in support of his case, the

accused entered into the witness box as D.W.2 and marked Ex.D.1-acknowledgment receipt to the legal notice issued by the accused alleging the contract of the second marriage by P.W.1 during the subsistence of marriage with the accused. P.W.1 and P.W.2 have categorically admitted the receipt of the legal notice issued by the accused on the above allegation. However, in the cross-examination, they denied the suggestion that she has conducted second marriage. Furthermore, Ex.D.3 is the copy of the legal notice and for which, admittedly, there was no reply.

20. This Court is at a lost to understand about the non reaction of P.W.1 and P.W.2 with regard to such an sensitive allegation that has been made under Ex.D.3 legal notice issued by accused. Be that as it may, on a combined reading of the oral evidence of D.Ws.3, 4 and 5 coupled with the documents Exs.D.3, D.4, D.5, D.6 and D.7, this Court is of the considered view that the suggestive case of the accused appears to be more probable and he has taken his efforts to probablise the case that before commencement of the trial in the Sessions Court that as P.W.2 arranged the second marriage of P.W.1 with the person of his choice as communicated and for which, there was a printed marriage invitation and the Manager of the marriage hall wherein marriage was conducted were all marked before the Sessions Court. Taking into account of the fact that under Ex.D.2/C.S.R.No.362/2002 which was given by none other than P.W.2 few months before the alleged FIR under Ex.P.4, wherein there was no whisper of any demand of dowry or any harassment against the accused also assumes significance.

21. In view of the existence of the document Ex.D.2 and also the other documents produced before the Court by the accused, this Court is of the considered view that the theory of the prosecution is more unbelievable and the evidence of P.W.1 and P.W.2 suffers from material contradiction on material facts that are touching upon the essential features of the charge under Section 498(A) IPC, besides there was a material contradiction with regard to the alleged demand of dowry in respect of jewels as spoken to by P.W.7, Inspector of Police and taking note of the answer elicited from P.W.6-Doctor and in view of presence of material contradiction regarding the alleged assault by the accused and the manner of the assault by the accused, I am of the considered view that the version of P.W.1 and P.W.2 in the witness box and being unworthy and unreliable, does not inspire the confidence of the Court. Taking note of the suggestive case which has been found to be more probable supported by the documentary evidence adduced on behalf of the accused, I am of the considered view that the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem, on the appellant/accused is liable to be interfered with.

22. Accordingly, the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem, in C.C.No.224 of 2006 dated 25.01.2008 is hereby set aside and the Criminal Appeal is allowed and the accused, who stands charged for the offences under Sections 498(A) and 324 IPC, is acquitted of the charges. The bail bond executed by the appellant/accused shall stand cancelled forthwith and the fine amount paid, if any, shall be refunded to him.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court, Salem.
2. The Prinipal Sessions Judge,
Salem (For information)
3. The Judicial Magistrate,
No.4, Salem
4. The Chief Judicial Magistrate, Salem.
5. The Inspector of Police,
Attayampatty Police Station,
Attayampatty,
Salem District.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Rathanavel, Advocate, S.R.No.58045

Cr1.A.No.176 of 2008

SS(CO)
GSP(14/09/2018)

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