

Bail Slip

1.K.Suresh
2.K.Kannan
3.K.Annusuya

The Above said Petitioner who are accused in Crime No.53/2009 of Shevapet Police Station, are directed to be released on bail as per order of this Court dated 04/10/2010 made in CRL.MP.1/10 in CRL.A564/10 on the file of this Court.

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on :10.07.2018

Pronounced on :19.09.2018

Coram:

The Honourable Mr.Justice RMT.TEEKAA RAMAN

Criminal Appeal No.564 of 2010

1.K.Suresh
2.K.Kannan
3.K.Annusuya

.. Appellants

/versus/

The State of Tamil Nadu,
represented by the
Assistant Commissioner of Police,
Law and Order,
Southern Range, Salem City.
(Crl.No.53 of 2009)

.. Respondent

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure praying to set aside the conviction and sentence passed in the judgment dated 06.09.2010 made in S.C.No.17 of 2010 on the file of the Court of the Sessions Judge, Mahila Court, Salem i/c (I Additional Sessions Judge, Salem) and allow this Criminal Appeal and acquit the appellant/accused 1 and 2 and 3.

For Appellant :Mr.S.Karthikeyan

For Respondent :Mr.R.Surya Prakash
Government Advocate

J U D G M E N T

The convicted accused 1 to 3 are the appellants herein. They are convicted for the offence under Section 498A IPC and sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.5,000/- each, in default, to

undergo 3 months Rigorous Imprisonment and the accused 1 to 3 were found not guilty for the offence under Section 306 IPC and under Section 4B of Tamil Nadu Prohibition of Harassment of Women Act.

2. After investigation, the respondent had filed Final Report before the trial Court. After observing the formalities, the case was numbered as S.C.No.17 of 2010. After framing charges, the trial has been conducted and the appellants were convicted for the offence as stated supra.

3. The case of the prosecution is that one Nithya was married to the 1st accused/appellant Suresh on 27.08.2007 and that, after their marriage, the said Nithya was ill-treated by the husband Suresh (A1), Kannan/Brother-in-law (A2), Anusuya/Mother-in-law (A3) and Manoranjitham/ Sister-in-law(A4). Further, she was also subject to severe scolding by the accused 2 to 4 for not getting conceived even after 6 months of marriage and that the 1st accused had kicked her for sitting in chair in front of her mother-in-law and that, the 4th accused used to scold her when she used to visit and hence, by the above acts of the appellants have given physical and mental torture to the deceased Nithya and hence, they have committed an offence under Section 498-A of IPC. Further, it is the case of the prosecution that on 09.01.2009, when the deceased Nithya sought permission to go to her parents house, the same was refused by the accused on flimsy ground and that the accused tortured her and hence, a charge under Section 4-B of the Tamil Nadu Prevention of Harassment of Women Act and further because of the above mentioned incidents all the accused had abetted the said Nithya to commit suicide and hence, they have committed an offence under Section 306 IPC.

4.To prove the charges, the prosecution has examined 13 witnesses as PW-1 to PW-13 and 19 documents were marked as Exs.P1 to P19. On the side of the defence, no witnesses were examined.

5.After hearing the prosecution case, the Sessions Judge, has acquitted the accused in respect of charge under Section 306 IPC and under Section 4 of the Tamil Nadu Prevention of Harassment of Women Act, however, found guilty of offence under Section 498A of IPC and they were sentenced as stated supra. Aggrieved against the above said conviction and sentence passed by the trial Court, the convicted accused have preferred the present appeal.

6.The learned counsel appearing for the appellants contended that (a)the trial Court had committed a grave error in taking into consideration that the 3rd accused had refused to send the deceased along with PW-2 on 09.01.2009 as a ground of cruelty,

while it is clear from the evidence of PW-2 that the 3rd accused refused to send the deceased to her home but she had only stated that day being a Friday, she would not send her to her mother's home and that PW-2 can come and take her on the next day and contended that, that aspect cannot be termed as cruelty. (b) Further, the statement of the 2nd accused that you know about me very well and this does not look nice, has been termed as cruelty by the trial Court is erroneous. When PW-2 had stated that this was uttered by the 2nd accused when the deceased wanted to go to parents home and that too being a Friday she was denied permission and the same is only for sentimental reasons, and cannot be terms as mental cruelty. The trial Court has erred in considering these circumstances as cruelty. (c) Even though the trial Court has given a categorical finding that the oral testimonies of the witnesses are insufficient to hold that the appellants/accused abetted deceased to commit suicide, it ought to have concluded that their testimonies are not reliable to convict the appellants/accused even under Section 498A IPC also.

7. Per contra, the learned Government Advocate (Crl.Side) has made his submissions supporting the impugned judgment passed by the Court below, stating that in view of the explanation given by PW-2 in the cross-examination regarding her presence till noon of the day in which the deceased Nithya committed suicide, and also in view of the various acts of the accused 1 to 3 upon the deceased, the trial Court has rightly come to the conclusion that all the appellants herein had committed the offence under Section 498A IPC.

8. Heard the learned counsel appearing for the appellants as well as the learned Government Advocate (crl.side) appearing for the State and perused the materials available on record.

9. Point for consideration:

(1) Whether the order of conviction passed by the Sessions Court under Section 498 A IPC is sustainable under law?

(2) Whether the sentence is excessive?

10. The Prosecution has come forward with a definite case that Nithya (now deceased), who was aged about 19 years, died by committing suicide on 09.01.2009 in the matrimonial home by hanging within a period of 17 months from her marriage and that Nithya committed suicide by hanging due to cruelty and harassment meted out at the hands of the accused 1 to 4, who are husband and his relatives. Accordingly, the respondent police laid final report for the alleged offence under Section 498A and 306 IPC and Section 4 B of Tamil Nadu Prohibition of Harassment of Women Act.

11. Based upon the evidence that was adduced during the time of trial, the learned Sessions Judge has found that the charges against the 4th accused [Manoranjitham sister of the first accused] are not made out. Accordingly, she was acquitted from all the charges and the trial Court further held that the alleged incident of cruelty said to have been caused by the acts of all the accused A1 to A3 on the victim girl are also inside the matrimonial house and accordingly, held that Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act is not attracted.

12. Further, the Sessions Judge has found that the evidence adduced by the prosecution in support of the charge under Section 306 IPC is insufficient to hold the accused as having abetted Nithya to commit suicide. The conduct that was elucidated from the evidence of the prosecution witness falls short of the term abetment. Accordingly, the learned Sessions Judge has held that as against the accused 1 to 4, the charge under Section 306 IPC has not been made out and acquitted them. Further, the trial Court held that the offence under Section 498A IPC is proved in the manner known to law and accordingly, the trial Court laid conviction for the offence under Section 498A of IPC and award sentence as supra.

13. PW-1 (Bhuvaneswari), who is the mother of the deceased Nithya, had set the criminal law into motion by filing Ex.P1-complaint which resulted in registering of Ex.P11 (First Information Report). After investigation, final report has been filed. In view of the order of the learned Sessions Judge, wherein the appellants have been acquitted under Section 306 IPC and 4B of the Tamil Nadu Prohibition of Harassment Act, this appeal is narrow down only to charge under section 498A IPC.

14. From the evidence of PW-1 to PW-3, who are relatives of the deceased, the following specific events are pointed out as harassment and cruelty in their cross examination as under:-

(1) 15 sovereigns of jewels were given to Nithya during marriage along with cot and almirah. The accused alleged that the jewels were of less purity and the cot and almirah were of interior quality and forced the deceased family to change it and give higher purity of jewel and materials.

(2) The deceased was subjected to medical examination frequently which made her weak.

(3) A1 kicked the deceased since she was sitting on the chair when her mother-in-law (A3) was squatting on the floor.

(4) The accused forced the deceased to eat

things which she did not like to take.

(5) A2 and A4 used to boss over the deceased. Their writ used to run large in the family.

(6) The deceased was not well days prior to her death. She was given treatment. She was feeling drowsy due to medication. The accused did not allow her to sleep. She was scolded by her mother-in-law (A3).

(7) On 09.01.2009 when the deceased wanted to go along with her maternal aunt (PW-2) the accused refused permission to leave the house.

On appreciation of the evidence and also taking note of the cross-examination of the said witnesses with that of the investigation officer, the learned Sessions Judge has rendered categorical finding that the above incidents 1 and 3 are all uncorroborated and run contrary to the evidence between the private prosecution witnesses. Accordingly, he has rejected all the said two incidents as spoken to by the private prosecution witnesses.

15. With regard to the charge under Section 498A IPC, the material witnesses are PW-1 and PW-2. PW-1 is the mother of the deceased and PW-2 is the sister of PW-1. It remains to be stated that the said PW-1 was present at the house of the accused along with the deceased Nithya upto 12.30 p.m on the fateful day i.e. 09.01.2009. The presence of PW-2, on the day, was not challenged during the cross-examination assumes significance besides lend credence to her version.

16. In her evidence, PW-2 has categorically stated that the accused attributed overt acts which fall with the definition of cruelty. According to PW-2, whenever the fourth accused, who is sister of the first accused was taking treatment for child birth, the same treatment was given to the deceased Nithya and the last two days prior to the fateful date on 09.01.2009 also assumes significance.

17. It is the specific evidence of PW-2 that the deceased was given some treatment on the previous day. So, she was feeling drowsy. However, without understanding her position, they have subjected her to harassment and scolded for not doing the household work which resulted the deceased to call her mother at Tiruppur and conveyed about the ill-treatment and about the incident. The said fact has been clearly spoken to by PW-1, which stands duly corroborated by the version of PW-2 who had been cross-examined on this point. It is to be stated that, PW-2 (sister of PW-1) was residing at Salem, where the deceased was also residing at a short distance. From the prosecution evidence,

it is seen that on hearing the inconsolable voice of the deceased, her mother PW-1 contacted PW-2, who is at Salem and asked her to go to the deceased house and take to her home. It is the specific evidence of PW-2 that as instructed by PW-1, she went to the house of the accused and asked permission of the accused to take the deceased to her house in the very same town viz., Salem. However, the accused have refused to send the victim along with PW-2, though it is only short distance from the matrimonial home in the same town, which assumes significance in the background of the case.

18. Furthermore, it is the specific evidence of PW-2 that A1 husband has refused permission to his wife (deceased) to go along PW-2, but he was ready to send her to the parents house at the same time. A1 husband was not inclined to send the deceased along with PW-2 since 09.01.2009 happens to be Friday. In fact, PW-2 admitted that A1 was ready to send the deceased along with PW-2 on the next day, but she had offered an explanation in the cross-examination that her house is very near to the deceased house and the atmosphere in the matrimonial home was fully charged with the power-show of the accused A1 to A3 and it is her further evidence that A2 was so adamant and was not understanding the feeling of the deceased girl who wanted to go to her parents house as she was not keeping well and feeling drowsy after medication as spoken to by PW-2 is found natural and clear to the events that was taking place few hours before suicide and hence, the same cannot be brushed aside lightly. Though the defence was successful in elucidating an answer in the cross-examination from PW-2 that she has not whispered the last portion of the above said explanation during the investigation. However, she has given her further explanation that, since the police have not asked regarding the same, in detail during their investigation, she has not whispered anything regarding the alleged incident.

19. However, on a combined reading of the both chief and cross-examination of PW-2, this Court is of the considered view that the evidence of PW-2 is natural and does not suffer from any infirmity as alleged by the appellants' counsel. On the contrary, on a combined reading of the chief and cross-examination of PW-2 her version is found to be natural and probable and it does not suffer from any material contradiction on material facts relating the charge.

20. With regard to the incident of 5, 6, 7 in the above listed harassments, it appears from prosecution witness that all are not well in the matrimonial home. On a combined reading of the evidence of PW-2 and PW-1, this Court is of the considered view that the significance of acts committed by the appellants as spoken to by PW-2 amounts to cruelty falling within the explanation under Section 498A IPC.

21.This Court is also conscious of the ratio laid down by the Hon'ble Supreme Court in AIR 2002 SC 2078 Giirdhar Shankar Tawade vs. State of Maharastra, wherein it was held that for convicting under Section 498A IPC, some cogent evidence is required to bring home the charge under Section 498A IPC, without which the charge cannot be said to be maintained. The relevant portion in the said judgment reads as follows

"A faint attempt has been made during the course of submissions that explanation (a) to the Section stands attracted and as such no fault can be attributed to the judgment. This, in our view, is a wholly fallacious approach to the matter by reason of the specific finding of the trial Court and the High Court concurred therewith that the death unfortunately was an accidental death and not suicide. If suicide is left out, then in that event question of applicability of explanation (a) would not arise - neither the second limb to cause injury and danger to life or limb or health would be attracted. In any event the willful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498- A and not de-hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A. The legislative intent is clear enough to indicate in particular reference to explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of explanation (b). The letters by itself though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498-A against the accused. Acquittal of a charge under Section 306, as noticed hereinbefore, though not by itself a ground for acquittal under Section 498-A, but some cogent evidence is required to bring home the charge of Section 498-A as well, without which the charge cannot be said to be maintained "

In the preceding paragraph, this Court for the reasons recorded therein has held that the acts committed by A1 to A3 on the deceased Nithya on days prior to the suicide pass test in positive and falls within the explanation to 498A IPC.

22.Taking note of the submission of the learned counsel for

the appellants that on the solidatory evidence of PW-2, the trial Court erred in laying conviction under Section 498A IPC. However, this Court is of the opinion that it is not the quantity of the witnesses but it the quality of the witnesses that has to be determined in support of the charge under Section 498A especially when the said PW-2 was found to be present for the entire day till noon before the fateful date of occurrence.

23. In view of the above discussion, this Court holds that the evidence of PW-2, who attributed overt acts against A1 and A2, A3 which falls within the definition of cruelty and the similar finding rendered by the learned Sessions Judge, Mahila Court, Salem, do not call for any interference as there is no irregularity or illegality in appreciation of evidence of PW-2. Furthermore, the complaint of PW-4 for causing the harmful mental act of cruelty and refusal by the accused to send Nithya along with PW-2 cannot be looked into isolation. However, as discussed supra, the entirety of the circumstances leading to the said incident has to be taken as a whole and hence, this Court is of the considered view that the conviction laid by the learned Sessions Judge is well founded and well merited and the same does not call for any interference at the appellate stage. According, the said finding and conviction for offence under Section 498A of IPC.

24. However, taking into consideration of the incident and also the fact that the parties belong to rural area and even that proceeded to the incident of refusal to send Nithya along with PW-2, the manner in which the refusal was made, this Court is of the considered view that the sentence imposed on the appellants by the trial Court that the appellants was sentenced to undergo Rigorous Imprisonment for a period of two years is modified to one of that the appellants 1 & 2 are sentenced to undergo Rigorous Imprisonment for a period of one year. The period of sentence already undergone by the appellants is ordered to be set off.

25. With the above modification, this Criminal Appeal is partly allowed. The conviction for the offence under Section 498A of IPC is confirmed. However, the sentence is reduced to one year Rigorous Imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo 3 months Rigorous Imprisonment. The period of sentence already undergone by the appellants shall be set off.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge, Mahila Court, Salem.

2.The Assistant Commissioner of Police, Law and Order,
Southern Range, Salem City.

3.The Judicial Magistrate No.3
Salem.

4.The Chief Judicial Magistrate,
Salem.

5.The I Additional Sessions Judge,
Salem.

6.The Public Prosecutor, High Court, Madras.

+1cc to Mr.S.Karthikeyan, Advocate, S.R.No.64781

Cr1.A.No.564 of 2010

KS (CO)
GSP (04/10/2018)



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