

BAIL SLIP

The Appellant herein Venkatesh, S/o. Arumugam, was directed to be released on bail as per the order of this Court, dt.9.9.2018 made in MP 1/2008 in Crl.A.673/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2018

PRONOUNCED ON : 29.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.673 of 2008

Venkatesh

... Appellant/Accused

Vs

The State Rep by
The Inspector of Police,
B-2, R.S. Puram Police Station(L & O),
Coimbatore District.
Crime No.532 of 2005

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment passed by the District Court (Magalir Neethimandram, Mahila Court) at Coimbatore in S.C.No.274 of 2005 dated 02.07.2007.

For Appellant : Mr.Jayaprakash
for Mr.Ma.P.Thangavel

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

J U D G M E N T

This appeal filed as against the judgement dated 02.07.2007 made in S.C.No.274 of 2005, thereby convicting the appellant under Section 498-A of Indian Penal Code and sentencing him for three years rigorous imprisonment and pay a fine of Rs.5,000/- in default to undergo six months rigorous imprisonment.

2. The case of the prosecution is that P.W.1 is the mother of the deceased and the deceased was married to her first husband and thereafter they got divorce. The accused used to visit P.W.1's house very often and he is none other than own

brother of P.W.1. The accused wanted to marry the deceased. Even though there was an objection from P.W.1's family, they lived together and got married. After some period of time, the accused suspected the deceased fidelity, since she was a divorcee. After the period of 17 years from their marriage, the deceased used to make complaint against the accused and she refused to be there in the matrimonial house. After elders' advice and panchayat, the deceased was with the appellant for some time and thereafter, she lodged a complaint before the All Women Police Station, Gandhipuram for the cruelty committed by the accused and for the allegation that the accused suspected her fidelity and used to beat up her.

3. While being so, on 08.06.2005, when P.W.5, the neighbour of the deceased, was in her house at about 1.30 p.m., she heard some noise from the deceased house. When she came out from her house, she had seen the deceased with burn injury. In the mean time, P.W.1 the mother of the deceased also came there and poured water on her. When P.W.1 enquired the deceased about setting fire on her by herself, she stated that the appellant suspected her fidelity and also scolded her with the allegation that the deceased was having illicit relationship with her employer one Dhandapani and very often used to quarrel with her and also used to beat up her. Therefore, she herself poured kerosene and set fire. Thereafter, she was taken to the Government Hospital Coimbatore for treatment.

4. P.W.14 the Doctor, had treated the deceased. He also informed to the concerned Judicial Magistrate to record her dying declaration. On 08.06.2005, the learned Judicial Magistrate recorded the dying declaration of the deceased, witnessed by the Doctor P.W.14. The medical certificate about the consciousness of the deceased marked as Ex.P.15. The learned Magistrate was examined as P.W.3 and the dying declaration was marked as Ex.P.3. After receiving the intimation from the hospital P.W.11, the Sub Inspector of Police, recorded the statement of the deceased Ex.P.8 and registered the same in Crime No.532 of 2005 for the offence under Section 498-A of IPC. The First Information Report was marked as Ex.P.6. P.W.12, the Investigation Officer recorded the statement of the witnesses and arrested the accused on 08.06.2005 and recorded his statement. Thereafter he handed over the entire case diary to P.W.13, the Inspector of Police.

5. P.W.13 received an information that the injured died on 15.06.2005 at about 7.00 a.m., and filed alteration report thereby altered the offence under Sections 498-A and 306 of IPC. The alteration report marked as Ex.P.12. After conducting inquest, the body was sent for postmortem. P.W.4, the Doctor conducted autopsy over the deceased body and submitted the postmortem report, which was marked as Ex.P.4. After examining

all the witnesses, P.W.13 the Investigation Officer, filed his final report. The trial Court framed charges under Section 498A and 306 of IPC against the accused. The appellant denied the charges and pleaded not guilty and claimed for trial.

6. The prosecution examined altogether P.W.1 to P.W.14 and marked Ex.P.1 to Ex.P.15 and produced M.O.1 to M.O.6. After closing of prosecution evidence, the appellant was examined under Section 313 of Cr.P.C about the materials appeared against him. The appellant denied the allegation against him, however he did not examine any witness. The trial Court after hearing the parties and on appreciation of evidence convicted the appellant as stated above. As against which, the present appeal.

7. The learned counsel appearing for the appellant would confine his argument with regard to the sentence alone.

8. Per contra, the learned Government Advocate (Crl. Side) would refer several portion of the oral and documentary evidence adduced by the prosecution and contend that the conviction and sentence imposed upon the appellant for the offence referred above is perfectly legal and prayed for confirming the same.

9. Heard the rival submission made by Mr.Jayaprakash, learned counsel appearing for the appellant and Mr.R.Ravichandran, learned Government Advocate (Crl. Side) appearing for the State and perused the records.

10. It is seen from the records, the mother of the deceased is examined as P.W.1 and she deposed that after a period of 17 years of the marriage between the accused and the deceased, the accused suspected her fidelity connected with her employer. They gave birth to two male children. The deceased committed suicide by setting fire on her by herself only for the reason that the accused used to very often quarrel with her and harassed with huge inhumanity and committed cruelty against the deceased. Further the dying declaration Ex.P.3 recorded by the learned Judicial Magistrate P.W.3, corroborated the evidence of P.W.1 that the deceased categorically stated that only because of the accused suspected her fidelity, she committed suicide. Further it is also proved that after gave birth of two children, the accused become alcoholic and used to beat her. It is also seen that the neighbour of the deceased P.W.2, has been examined and she also supported the case of the prosecution and corroborated the evidence of P.W.1 and the dying declaration. Therefore, the prosecution proved the charges under Section 498-A of IPC as against the accused.

11. As far as the charge under Section 306 of IPC is concerned, no one has spoken about the presence of the accused,

at the time of committing suicide by the deceased. Further, there is no whisper about the harassment or cruelty committed by the accused, soon before her death. Therefore, the trial Court found guilty of the accused only for the offence under Section 498A and sentenced him to undergo three years rigorous imprisonment. Insofar as the offence under Section 306 of IPC, the accused found not guilty and rightly acquitted.

12. In such circumstances, this Court has to decide whether the appellant is entitled for any reduction of sentence imposed for the offence under Section 498-A of IPC. The learned counsel for the appellant would submit that the appellant and the deceased were lived together for 17 years and also gave birth to two children. Now the children are with the custody of the accused and he is taking care of them. Further he would submit that the accused has already been incarcerated nearly three months from the date of the First Information Report. Considering these facts and circumstances of the case, this Court is of the view that the sentence imposed on the appellant under Section 498-A of IPC, can be reduced to six months.

13. Accordingly, this criminal appeal is partly allowed. The judgment dated 02.07.2007 in S.C.No.274 of 2005 passed by the learned District Judge (Magalir Neethimandram, Mahila Court) at Coimbatore is hereby confirmed. However, the sentence imposed on the appellant for the offence under Section 498-A of IPC is reduced to six months. The respondent/ Police is directed to secure the appellant for the purpose of sentencing him to undergo the reduced/modified period of conviction. The period of sentence already undergone by the appellant if any, shall be given set off as required under Section 428 of IPC.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rts

To

1.The Presiding Officer,
The District Court
Magalir Neethimandram,
Mahila Court, Coimbatore.

2.The Inspector of Police,
B-2, R.S. Puram Police Station(L & O),
Coimbatore District.

3.The Public Prosecutor,
High Court,
Madras.

4.The District Court,
(Mahalir Neethi Madram),
Mahil court, Coimbatore.

5.The Chief Judicial Magistrate,
Coimbatore.

6.The Judicial Magistrate, No.I,
Coimbatore.

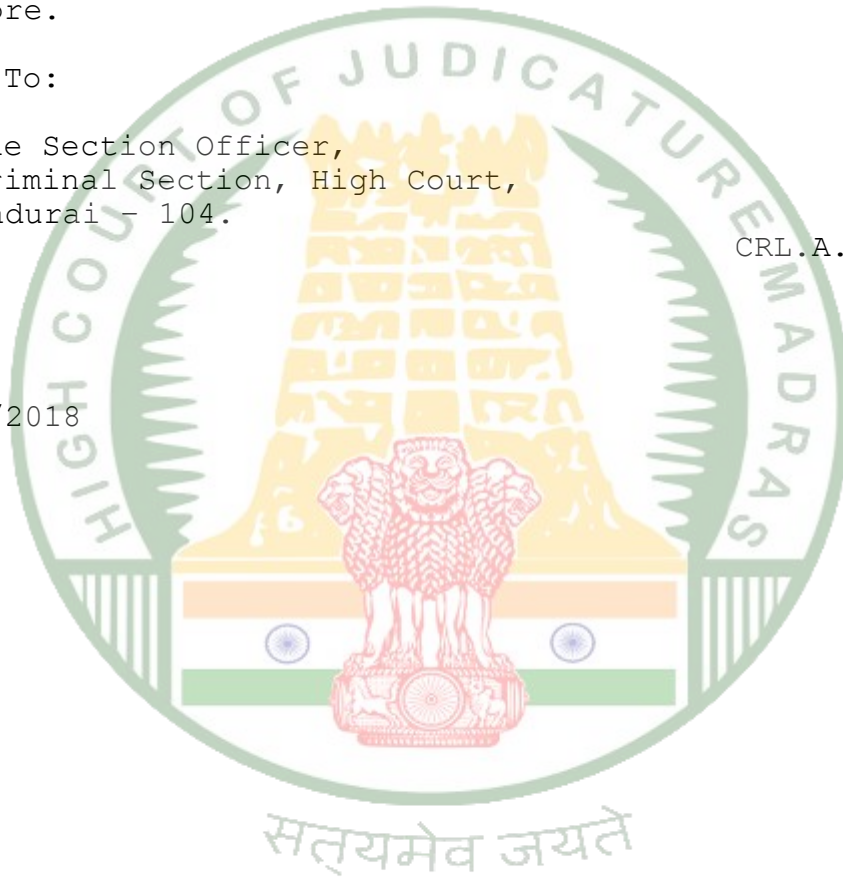
Copy To:

The Section Officer,
Criminal Section, High Court,
Madurai - 104.

CRL.A.673 OF 2008

GMI (CO)

rrs 25/10/2018



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