



WEB COPY

Bail Slip

The Appellant/Sole accused namely venkesh S/o Palani was directed to be released in bail as per order of this court dated 18/3/14 made in Crl.MP.1/14, in Crl Appeal No.97/14 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 24.07.2018

Orders Pronounced on: 23-10 -2018

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Criminal Appeal No.97 of 2014

Venkatesh ... Appellant/Accused

Versus

State rep. by,
Deputy Superintendent of Police,
Vazhapadi Range,
Vazhapadi Police Station,
Salem District. ... Respondent/Complainant
(Crime No.59 of 2012)

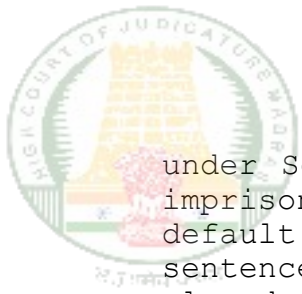
Appeal filed under Section 378 of the Criminal Procedure Code, to set aside the Judgment dated 14.02.2014 made in S.C.No.361 of 2012 on the file of Sessions Judge, Magalir Neethimandram, Salem.

For Appellant : Mr.K.Selvakumaraswami

For Respondent : Mr.R.Surya Prakash,
Government Advocate (Crl.side)

JUDGMENT

The convicted accused is the sole appellant herein. The appeal is preferred by the appellant/ accused before this Court against the conviction and sentence dated 14.02.2014 made in S.C.No.361 of 2012 on the file of the Sessions Judge, Magalir Neethimandaram, Salem convicting the appellant under Section 498-A of IPC and sentencing him to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment and convicting him



under Section 306 of IPC and sentencing him to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment. Both the sentences were ordered to run concurrently. However, the period already undergone by the accused was ordered to be set off under Section 428 Cr.P.C.

2. The learned counsel for the appellant contended that PW.1, who is the complainant, disowned his version in the cross examination. He has stated in the cross examination that he was not aware of the contents of the complaint Ex.P1 and PW2 in his chief examination, has stated that on 12.02.2012, he saw the appellant and the deceased quarrelling with each other. While, in his cross examination, he supported the case of the deceased.

3. According to the learned counsel for the appellant, the trial Judge erroneously believed the version of PW.5 & PW.6, who are the parents of the deceased. Even in the chief examination, on the date of alleged occurrence, they admitted that they were living in Kerala and ought to have considered the defence point that the deceased was suffering from severe stomach ache and attempted to commit suicide several times earlier.

4. The learned Government Advocate made his submissions in respect of Judgement of Sessions Court.

5. Points for determination:

(i) Whether the order of conviction passed by the Sessions Judge under Section 498 A and 306 of IPC are sustainable in law?

(ii) Whether the sentence awarded by under Section 498 A and 306 of IPC are Excessive?

6. After hearing the contentions raised by the respective counsel for both sides and on perusal of the documents placed before this Court, it appears that the respondent / Police have filed a final report before the Judicial Magistrate, Salem for the alleged commission of offence under Section 498 A and 306 of IPC, which was taken on file as Crime No. 59 of 2012 at Vazhapadi Police Station, which was taken on file in PRC.No.14 of 2012 and the case was committed to the Sessions Court, Magalir Neethimandram, Salem and numbered as SC.No.361 of 2012.

7. The case of the prosecution is that the marriage between the deceased (Priya) and the accused was solemnized on 01.11.2009 at Varagur Village, Aadhi Dravidar Colony and the said Priya was the daughter of the witnesses Pichaiyapillai and Anjalai ammal and out of the wedlock, they begot one girl child and when the child was two years old, the deceased (Priya) had separated from the matrimonial home and six months prior to the incident, she was assaulted with stick and brick by the accused and thereby, the accused had committed the offence under Section

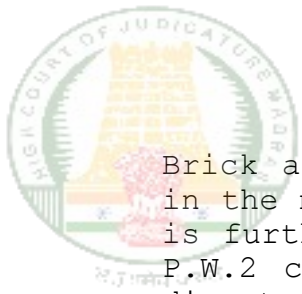


498A of IPC. Due to the cruelty committed by the accused, she committed suicide in the matrimonial home by hanging on 12.02.2012, hence the charge under Section 498 A and 306 of IPC are framed against the accused.

8. To buttress the charges, the prosecution had examined PWs1 to PW17 and marked Exs.P1 to P12. No material objects and no defence side documents have been marked. PW1, Murugan has turned as hostile witness during the trial. PW2, PW3, PW6, PW8, PW9 and PW11 who are neighbours at the place of occurrence have also turned hostile. Further, it is seen that PW1 namely Murugan, and PW7, Ramesh, who is the joint signatory of EX.P10, complaint admitted his signature in the complaint and to that limited extent only he support the case of the prosecution. While PW 10, Photographer, took photos of the scene of crime; PW13, Revenue Officer; PW14, Doctor, who had conducted Post Mortem and issued Ex.P7 Post Mortem Certificate to the effect with the victim Priya, died due to hanging by suicide; PW15, PW16 and PW17, who are Police witnesses, who could depose regarding discharge of the official duty in registering of the FIR and taking the dead body for Post Mortem and filed the final report. When, PW4 was examined and he has stated that his admitted signature was only marked at the scene of crime not before the Office of the Deputy Superintendent of Police and Mahazar, Ex.P2 was marked with regard to the scene of crime. It is seen from the records that the parents were examined as PW5 & PW6 and they have stated that the neighbours, who were residing at the place of occurrence had called them, over the phone and informed them about the death of their daughter.

9. While the parents of the victim girl were examined as P.W.5 and P.W.6, their relatives were examined as P.W.1 and P.W.7, who are none other than the brother's sons of P.W.6. It is seen from the evidence of P.W.2-Chinnasamy, the neighbour, who has stated that the deceased Priya tried to hang herself many times. Though the complaint-Ex.P.1 was said to have been lodged by P.W.1-Murugan, however, he has turned hostile and not supported the case of the prosecution. While the co-signatory of the Ex.P.1-complaint, P.W.7 has admitted his signature in Ex.P.1-complaint, however, denied his contents has also assumes significance as to the coming into the existence of Ex.P.1-complaint, based upon which, the investigation was said to have been commenced.

10. Let us consider the version of the parents of the deceased viz., P.W.5 and P.W.6 while P.W.6-Anjalai, mother of the deceased Priya could depose that she came to know there was a petty quarrel between the husband and wife and P.W.2-Chinnasamy has called her over phone and averred that the accused has beaten the deceased and after the phone call from P.W.2-Chinnasamy, P.W.5 along with P.W.6 rushed to Salem and saw the deceased was assaulted by the deceased with Chappel and



Brick and according to her, as she sensed that all is not well in the matrimonial home, they took their daughter to home and it is further deposed by her that two weeks prior to the incident, P.W.2 came to Kerala and in order to advise them to solve the dispute between the deceased and the accused and thereafter she had sent her daughter to matrimonial home. It is her further evidence that when they came to Salem, after hearing the dispute between the accused and the deceased both her brother's son P.W.1 and P.W.7 have interfered and pacified the matter. However, both P.W.1 and P.W.7 have turned hostile and not supported the case of the prosecution and also not supported the version of P.W.5 and P.W.6 assumes significance.

11. As stated supra, in the cross-examination, P.W.6-Anjalai has specifically admitted that P.W.2-Chinnasamy came to her residents in Kerala and pacified the parents for settlement three months prior to the incident which caused serious doubt as to his version in the chief examination with regard to the duration also assumes significance. She also admitted that three months prior to the incident, "என் மகள் தற்கொலை செய்ய முயற்சி செய்தது ஒரு முறை எனக்கு தெரியும். பிரியாவை கொடுமை செய்வது சம்மந்தமாக என்னிடம் என் அண்ணன் மகன்கள் எதுவும் கூறவில்லை." and this Court finds that the deceased is the hyper sensitive woman and gets provoked even a trivial incidents of life. The version of P.W.6-Anjalai with regard to the alleged petty quarrel between the husband and wife, she was not supported by the version of P.W.2 or by P.W.1 and P.W.7, who are none other than the uncle of the deceased, who is also brother's son of P.W.6 and hence, this Court finds that the version of P.W.5 and P.W.6, the parents of the deceased is runs to be the material contradiction as to the material particulars regarding the alleged cruelty said to have been caused by the accused on the deceased.

12. It remains to be stated that PW1 Murugan and PW7 Ramesh, who were uncle of the deceased [brother son of PW4] have not whispered anything in support of the prosecution and have not deposed anything implicating the accused with charge or indiscriminating statement against the accused assumes significance. All that PW7 has stated is that he went to the Police Station and lodged the complaint as stated by the Police and he signed and gave the complaint.

13. It remains to be stated that PW5, PW6 are residing at Kerala. The local guardian watching all the family matters of the deceased and the accused are PW1 and PW7, however, they have not whispered anything against the accused in respect of the charge. Further, though both PW5 and PW6, parents of the victim deposed that three months prior to the incident, PW2, Chinnasamy came to Kerala for settlement and took her daughter for re-union with the accused / husband, however, PW2 has not



whispered anything about any such an incident, assumes significance, especially, in view of the statement of the Investigation Officer who had recorded the statements of PW5 and PW6 to the effect that PW9 called over phone two weeks prior to the alleged incident said to have taken place between the accused and deceased, however, PW9 also turned hostile and not supported the case of the prosecution.

14. Thus, this Court finds that though PW5 and PW6 were living in Kerala, deposed that all was not well in the matrimonial home of the deceased, however, the witnesses, namely PW2, PW3, PW6, PW8, PW9 and PW11 have all turned hostile and have not supported the case of the prosecution and have not corroborated with the evidence of PW5 and PW6, who were admittedly residing at Kerala who were not at the place of crime namely at Salem. It remains to be stated that both PW5 and PW6 have not specifically alleged as to the cruelty under Section 498 A of IPC. In view of the answer elicited during the cross examination that petty quarrel erupted between the parties, there is no averment or there is no whisper in the evidence of PW5 and PW6 to any kind of harassment by the accused that forced the wife to commit suicide by hanging. In other words, there is no evidence portrayed against the accused that the victim was induced or instigated to commit suicide under Section 306 of IPC. However, on an erroneous consideration, it appears that the Trial Court, considering that petty quarrel is enough to commit suicide, has laid the conviction against the accused, which is unsustainable in law. Hence, this Court finding that the reasoning of the Trial Court with regard to the charge of alleged demand of dowry for committing suicide does not stand to legal scrutiny for want of legal evidence. This Court holds that the evidence of P.W.4 & 5 cannot be taken to prove the charges beyond reasonable doubt against the accused and in view of the legal infirmity, the conviction and sentence passed by the Sessions Judge, Salem for the offence under Section 498 A and 306 of IPC are hereby set aside.

15. In the result, the appeal is allowed and the conviction and sentence passed by the Sessions Judge, Salem is set aside and the bail bond if any executed shall stand closed.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

klt

To

1. The Judicial Magistrate, No VI, Salem



2. -do- Through The Chief Judicial Magistrate, Salem

3. The Superentendent, Central Prison, Coimbatore.

4. - do - Through The Principal Sessions Judge, Salem

5. The Sperentendent, Central Prison, Coimbatore

6. The Deputy Superendent of Police, Vazhapadi Range,
Vazhapadi Police Station, Salem.

7. The Public Porsecutor, High Court, Madras.

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

Crl.A.No.97 of 2014

SKV (CO)

GMV (09/11/2018)