

BAIL SLIP

The petitioner/Accused No.1 Viz, Senthil Kumar S/o.Venkatesan be and hereby was directed to be released on bail as per order of this court, dated 22.09.2011 and made in Crl.MP.No.1 of 2011 in Crl.A.No.558 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.558 of 2011

Senthilkumar

..Appellant/Accused No.1

-Vs-

The State rep. by
The Inspector of Police,
K1, Sembium Police Station,
Chennai-600 001.

...Respondent/Complainant

This Criminal Appeal is filed under Section 374 of Cr.P.C. against the judgment of conviction passed by the learned VI Additional Sessions Judge (Mahila Court), Chennai, dated 08.08.2011 in S.C.No.556 of 2010.

For Appellant : Mr.T.R.Ravi
Legal Aid Counsel

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been directed against the judgment of conviction dated 08.08.2011 made in S.C.No.556 of 2010 by the learned VI Additional Sessions Judge (Mahila Court), Chennai.

2 The respondent police registered a case against the appellant and his parents in Crime No.268/2010 for the offence punishable under Sections 498(A) and 306 of IPC and after completing investigation, laid a charge sheet before the learned V Metropolitan Magistrate, Egmore, Chennai. The learned Magistrate has taken the charge sheet on file in P.R.C.No.201 of 2010 and after competing legal formalities, since the offence charged against the accused is triable only by the Court of Sessions, the case was committed to the learned Principal

Sessions Judge, Chennai, which was taken on file in S.C.No.556 of 2010 and made over the same to the learned VI Additional Sessions Judge, Mahila Court, Chennai.

3 Before the trial Court, in order to prove the case of the prosecution, P.Ws.1 to 15 were examined and Exs.P1 to 16 were marked besides material objects 1 & 2. After completing prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses were put before the accused, they denied as false. On the side of the defence, no one was examined and no document was marked.

4 The learned trial Judge, after completing trial and after hearing both the counsel, by judgment dated 08.08.2011 acquitted the other accused and convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-, in default, to undergo imprisonment for a further period of three months for the offence under Section 498(A) of IPC and to undergo rigorous imprisonment for a period of six years with fine of Rs.1000/-, in default, to undergo imprisonment for a further period of three months for the offence under Section 306 of IPC. Aggrieved against the judgment of conviction made by the trial Court, the convict has preferred this present appeal before this Court.

5 The learned counsel appearing for the appellant would submit that initially case was registered against three accused and trial Court convicted this appellant alone and acquitted other accused stating that prosecution has failed to prove its case beyond reasonable doubt against the other accused. The trial Court has extended benefit of doubt on the other accused and failed to extend the same on this appellant. P.W.1 is father, P.W.2 is mother and P.W.3 is brother of the deceased and except these interested witnesses all other independent witnesses had turned hostile and not supported the case of the prosecution. There is no independent witness to corroborate the evidence of interested witnesses P.Ws.1 to 3, who had informed the Revenue Divisional Officer during the inquest, that the accused only murdered the deceased, but, afterwards, had stated that the deceased died only because of the harassment made by the accused. The Investigating Officer has not stated anything about the harassment or cruelty made by the appellant as alleged by the prosecution witnesses. Even though, the trial Court has observed that the materials and evidence of P.Ws.1 to 3 were not sufficient to convict the other accused, but, believed the evidence of P.Ws.1 to 3 against this appellant alone. Prosecution has cited P.Ws.4 to 9 as eye witnesses, but, they

have turned hostile and not supported the case of the prosecution. There is material contradictions between the evidence of prosecution witnesses. The learned counsel would further submit that the deceased and the appellant loved each other and got married and after marriage, the appellant was very much affectionate towards the deceased and he left his parents and was living with his wife. The deceased begotten two male children out of their wedlock and at any point of time the appellant never demanded any dowry as alleged by the prosecution and there is no abetment. The original complaint preferred before one of the Sub-Inspectors in the Sembium Police Station was concealed by the prosecution, in order to implicate this appellant in this case. Prior to the occurrence, there was no abetment and demand of dowry and only some altercations between the deceased and the appellant, which would generally happen between husband and wife and the same will not be termed to be harassment and cruelty, which comes under Section 498(A) and the appellant cannot be convicted for the offence under Section 306 of IPC. The trial Court has failed to consider the above facts and erroneously believed the evidence of P.Ws.1 to 3 against the appellant and recorded conviction, which warrants interference.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that there is no dispute with respect to the relationship of the parties and also the deceased died unnaturally within seven years from the date of marriage, committing suicide by pouring kerosene and setting fire on her own. P.W.14, the Doctor, who conducted autopsy on the body of the deceased had opined that the death was due to burn injuries, which proves the fact that the death of the deceased is unnatural one. The inquest report filed by the Revenue Divisional Officer and Exs.P6 to 8 reveal that the death of the deceased is unnatural and the accused are the cause for her death. Further the deceased died within seven years from the date of marriage unnaturally and hence the accused must prove his innocence to exonerate from the charges framed against him. In this case, the appellant did not examine any witness to prove his defence. Further the prosecution witnesses 1 to 3, even before the Revenue Divisional Officer, had stated about cruelty made by the appellant. Even though, prosecution has not proved its case beyond reasonable doubt against the other accused, from the evidence of P.Ws.1 to 3 coupled with the evidence of Doctor/P.W.14 and the report of the Revenue Divisional Officer, prosecution has proved its case against this appellant and hence the trial Court, by rightly appreciating evidence of prosecution witnesses against this appellant, convicted him, which does not call for any interference.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 Case of the prosecution is that one Vidhya , who is daughter of the P.Ws.1 & 2 was given marriage to this appellant and after marriage, this appellant along with his parents, who were arrayed as A2 & A3 used to harass the Vidhya. This appellant on consumption of liquor, ill-treated her by demanding more money and jewels and beaten her frequently. The said Vidhya, bearing all those harassment caused by her husband, the appellant herein, had begotten two children. At one point of time, when the Vidhya could not bear the torture made by the appellant, came to her parents house and remained there for some time, even there also the appellant went and picked up quarrel with the Vidhya and her parents P.Ws.1 & 2. Due to the unbearable situation, P.W.1 had preferred a complaint before the Police and the police officials intervened and pacified both side for the peaceful living of the Vidhya and on 05.05.2010, the Vidhya went back to her matrimonial home. While so, on 08.05.2010 at about 1.00 p.m. due to unbearable harassment made by the accused, had chosen the way of committing suicide to get rid from all unbearable torture made by the accused, leaving her two children and she herself poured kerosene on her and set fire. Due to burn injuries, the Vidhya died. Therefore case was registered against this appellant and his parents, the learned trial Judge, after trial, had acquitted the other accused and convicted this appellant, against which, he preferred this appeal.

9 It is seen that P.W.1 is father, P.W.2 is mother and P.W.3 is brother of the deceased Vidhya. The appellant is husband of the Vidhya, after marriage, the appellant caused unbearable torture to the Vidhya and hence she decided to commit suicide. The trial Court had acquitted the other accused and convicted this appellant alone. Admittedly, the marriage between the appellant and the deceased had taken place on 06.09.2004 and the deceased died on 08.05.2010 within seven years from the date of marriage. The deceased begotten two children to the appellant. P.Ws.4 to 9 are the independent witnesses for Mahazar and subsequently, during trial, they have turned hostile. However, P.Ws.1 to 3 have clearly deposed that from the date of marriage, the appellant used to consume liquor and beat the deceased and harassed her physically and verbally. The deceased, could not bear the untold torture caused by the appellant, used to go to parental house and they would pacify her and send back her to matrimonial home. The appellant not stopped this harassment with first incident, he continuously harassed her by

beating her consuming liquor. At one incident like this, when P.W.3 went to the house of the appellant to pacify the quarrel, the appellant abused him in a filthy language, which incident was spoken by P.W.3 and corroborated with the evidence of P.Ws. 1 & 2.

10 The inquest report filed by the Revenue Divisional Officer and Exs.P6 to 8 reveal that the death of the deceased is unnatural and the accused are the cause for her death. Further the deceased died within seven years from the date of marriage unnaturally by committing suicide by pouring kerosene and setting fire on her own, since she could not bear the untold torture caused by the appellant. P.W.s.1 to 3 has stated some incidents to show the appellant even after several years of marriage, had been beaten the deceased consuming liquor. Further the prosecution witnesses 1 to 3, even before the Revenue Divisional Officer, had stated about cruelty made by the appellant. From the evidence of P.Ws.1 to 3 coupled with the evidence of Doctor/P.W.14 and the report of the Revenue Divisional Officer, prosecution has proved its case against this appellant.

11 On reading of the entire evidence of P.Ws.1 to 3 and the Doctor/P.W.14, who conducted autopsy on the body of the deceased and the inquest report filed by the Revenue Divisional officer, this Court finds that the appellant has committed offence under Section 498(A) and since the deceased had been lived with the appellant for nearly six years and there is no eminent proof to show the abetment by this appellant, this Court is inclined to set aside the conviction passed for the offence under Section 306 of IPC.

12 Accordingly, conviction and sentence recorded by the trial Court for the offence under Section 306 of IPC is hereby set aside and the conviction and sentence passed for the offence under Section 498(A) is hereby confirmed.

13 In the result, the criminal appeal is partly allowed with the above modifications. The trial Court is directed to secure the appellant to serve remaining period of imprisonment, if any.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The VI Additional Sessions Judge (Mahila Court), Chennai.
2. The Public Prosecutor, High Court of Madras.
3. The Inspector of Police, K1, Sembium Police Station, Chennai-600 001.
4. The V Metropolitan Magistrate
Egmore, chennai-600 008
5. -do-thro the Chief Metropolitan Magistrate
Egmore chennai-600 008
6. The Superintendent
Central Prison, Puzhal Chennai
7. The Secretary
High Court Legal Services committee
chennai-104

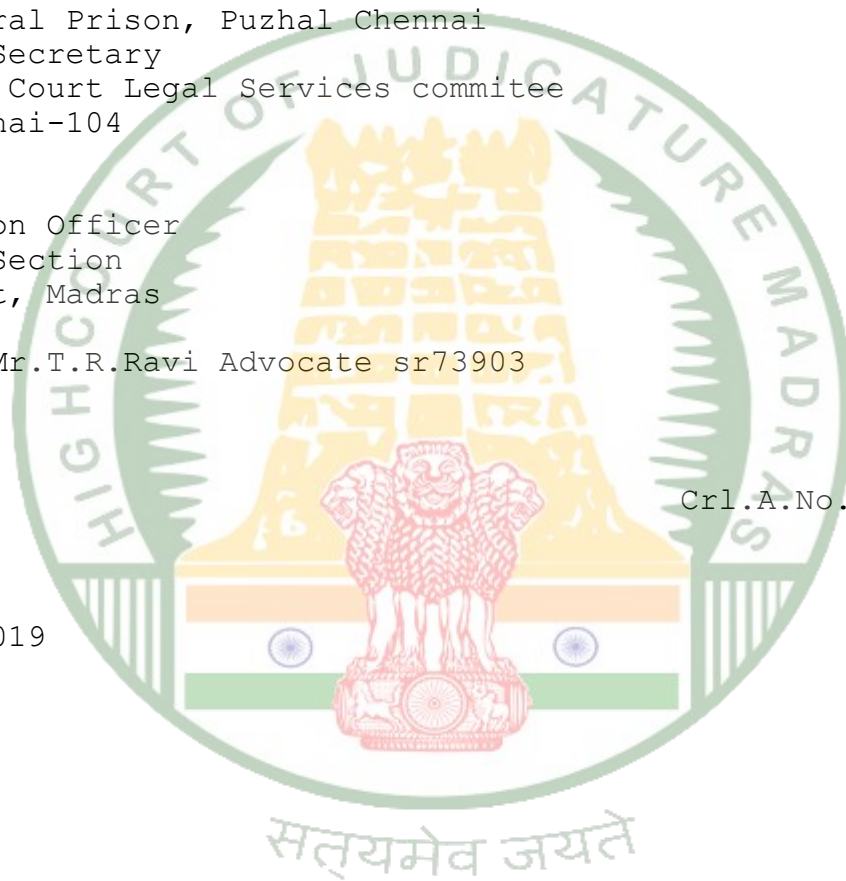
copy to

The Section Officer
Criminal Section
High court, Madras

+1 cc to Mr.T.R.Ravi Advocate sr73903

Crl.A.No.558 of 2011

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