

Bail Slip

The Appellant/Accused, namely Murugan S/o.Dharumalan was directed to be released on bail as per order dated 22.08.2011 in crl MP.NO.1/11 IN CRL RC.NO.1102/2011 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2018

PRONOUNCED ON : 23.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1102 of 2011

Murugesan

.. Petitioner/Appellant/
Accused No.1

-vs-

State represented by the
Deputy Superintendent of Police,
Mayiladuthurai.
(All Women Police Station
Crime No.5/2004)

... Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., praying to allow the revision and set aside the judgement dated 16.03.2011 made in C.A.No.66 of 2006 on the file of the learned Sessions Judge, Nagapattinam, against the judgment dated 18.04.2006 made in S.C.No.205 of 2005 made on the file of the learned Principal Assistant Sessions Judge, Mayilduthurai.

For Petitioner : Mr.V.Kasinatha Bharathi

For Respondent : Mrs.V.Sarathadevi,

Government Advocate (Criminal side)

ORDER

Convicted accused is the revision petitioner herein. This Criminal Revision case has been filed against the judgment dated 16.03.2011 made in C.A.No.66 of 2006 on the file of the learned Sessions Judge, Nagapattinam, in partly allowing the appeal by convicting the petitioner under Section 498(A) IPC., and reducing the sentence to one year rigorous imprisonment as against three years rigorous imprisonment, awarded by the trial Judge and maintaining the fine imposed by the learned Principal Assistant Sessions Judge, Mayiladuthurai by its judgment dated 18.04.2006 made in S.C.No.205 of 2005.

2. The respondent police filed a final report in Crime No.5 of 2004 before the learned Judicial Magistrate, Myladuthurai alleging that the accused have committed the offence under Sections 498-A and 304(b) IPC and Section 4 of Dowry Prohibition Act.

3. The case of the prosecution is as follows:

The deceased Prabavathi is the daughter of PWs.1 and 2. A1-Murugesan is the husband of the deceased and A2 is the father of A1. The marriage between A1 and the deceased was solemnized on 08.03.1998 at K.V.C.Marriage Hall at Tiruvizhanthur. At the time of marriage PW.1 gave 10 sovereigns of gold jewels to the deceased and 3 sovereigns and Rs.10,000/- to A1. At the time of marriage A1 was working as driver. After marriage, both the deceased and A1 were residing at Chennai in a rented house. Out of wedlock, one male and one female child were born to them. As A1 was not having permanent job in any company, he requested PW.1 to buy him a van so that he could run the van for rent and earn. Therefore, PW.1 bought an old van for a sum of Rs.55,000/-. After repairing the same PW.1 gave the same to A1. As the van developed frequent repairs again PW.1 spent Rs.15,000/-. A1 was running the above van for six months and thereafter, he sold the van. When A1 again demanded Rs.50,000/- from PW.1. In order to buy a new van, A2 also demanded the said amount. However, PW.1 told them that he did not have money. From that time onwards, A1 and A2 started treating the deceased cruelty and in fact they started causing injury by cigarette bits and also started to make the deceased to kneel down in front of them. After such cruel treatment, the deceased used to come to the house of PW.1 and stayed there for 10 to 15 days. Thereafter, A1 also used to come to the house of PW.1 to take the deceased. The accused also demanded a house site, which stands in the name of the deceased and requested to sell the land for going to the foreign country. However, PW.1 refused to give money. On 28.04.2004, PW.1 received a phone call from A1 to come to Chennai to take back the deceased. Accordingly, PW.1 went there and when enquired the deceased, she informed that the accused treating her cruelty by demanding money. However, PW.1 informed that he did not have money. For which, A2 informed PW.1 to keep his daughter with him till the money is paid. Thereafter, PW.1 brought the deceased to his house at Mayilduthurai on 29.04.2004. After two days, A1 also came to Mayilduthurai and demanded Rs.20,000/- to go to foreign country. However, PW.1 did not give money. Thereafter, A1 was staying in the house of PW.1 for 15 days on 14.05.2004, when PW.1 started to leave for work, his daughter was weeping. When PW.1 enquired the deceased, she told him that A1 beat her and demanded money. Immediately, PW.1 informed his daughter to say A1 to get the passport, so that he would make arrangement for money. By saying so, PW.1 went to his work as usual. On the same day, at 11.00 a.m., his daughter committed suicide.

4. To prove the charges the prosecution examined PW1 to PW.22 and marked Ex.P.1 to Ex.P.17 and M.O.1 to M.O.6. On consideration of the oral and documentary evidence, the trial Court acquitted A2 from all the charges and acquitted A1 in respect of charges under Sections 304 (b) IPC and Section 4 of Dowry Prohibition Act alone. However, convicted A1 under Section 498-A IPC and sentenced him to undergo three years rigorous imprisonment and a fine of Rs.5,000/-, in default, to undergo six months rigorous imprisonment. On appeal in C.A.No.66 of 2006, the learned District and Sessions Judge, Nagapattinam confirmed the conviction and however modified the sentence as imposed by the trial Court from three years to one year and fine has been kept intact. Hence, this revision.

5. Heard the learned counsel appearing for the revision petitioner, the learned Government Advocate (Criminal side) appearing for the respondent and perused the records.

6. The learned counsel for the revision petitioner/accused contended that PW.6 also stated that there was no unusual thing before the death of the deceased as both the petitioner and the deceased were talking normally and there was no cruelty as per the dying declaration given before PW.19 and PW.20. He further contended that there has been total contradiction by the prosecution witnesses and the dying declaration of the deceased and therefore, the Courts below ought to have extended the benefit of doubt in favour of the petitioner. Failure to do so is a material error, apparent on the face of the record, warranting interference.

7. After hearing the rival submissions and perusing the documentary evidence points for determination that arises in this revision petition are:

- (i) Whether the conviction under Section 498-A IPC is sustainable? and
- (ii) Whether the sentence awarded therefor is excessive?

8. The brief facts of the case of the complainant as spoken to by PW.1 in the witness box is as follows:

The deceased Prabavathi is the daughter of PWs.1 and 2. A1-Murugesan is the husband of the deceased and A2 is the father of A1. The marriage between A1 and the deceased was solemnized on 08.03.1998 at K.V.C.Marriage Hall at Tiruvizhanthur. At the time of marriage PW.1 gave 10 sovereigns of gold jewels to the deceased and 3 sovereigns and Rs.10,000/- to A1. At the time of marriage A1 was working as driver. After marriage, both the deceased and A1 were residing at Chennai in a rented house. Out of wedlock, one male and one female child were born to them. As A1 was not having permanent job in any company, he requested PW.1 to buy him a van so that he could run the van for rent and earn. Therefore, PW.1 bought an old standard van for a sum of Rs.55,000/-. After repairing the same PW.1 gave the same to A1. As the van developed

frequent repairs again PW.1 spend Rs.15,000/-. A1 was running the above van for six months and thereafter, he sold the van. When A1 again demanded Rs.50,000/- from PW.1 in order to buy a new van, A2 also demanded the amount. However, PW.1 told them that he did not have money. From that time onwards, A1 and A2 started treating the deceased cruelty and in fact they started causing injury by cigarette bits and also started to make the deceased to kneel down in front of them. After such cruel treatment, the deceased used to come to the house of PW.1 and stayed there for 10 to 15 days. Thereafter, A1 also used to come to the house of PW.1 to take the deceased. The accused also demanded house site stands in the name of the deceased and requested the sell the land to go to the foreign country. However, PW.1 refused to give money. On 28.04.2004, PW.1 received a phone call from A1 to come to Chennai to take back the deceased. Accordingly, PW.1 went there and when enquired the deceased, she informed that the accused treated her cruelty by demanding money. However, PW.1 informed that he did not have money. For which, A2 informed PW.1 to keep his daughter with him till the money is paid. Thereafter, PW.1 brought the deceased to his house at Mayilduthurai on 29.04.2004. After two days, A1 also came to Mayilduthurai and demanded Rs.20,000/- to go to foreign country. However, PW.1 did not give money. Thereafter, A1 was staying in the house of PW.1 for 15 days on 14.05.2004, when PW.1 started to leave for work, his daughter was weeping. When PW.1 enquired the deceased, she told him that A1 beat her and demanded money. Immediately, PW.1 informed the deceased to say A1 to get the passport, so that he would make arrangement for money. By saying so, PW.1 went to his work as usual. On the same day, at 11.00 a.m. The deceased committed suicide. On hearing the same PW.1 immediately rushed to the house and found his daughter in unconscious stage with burn injuries. Thereafter, they admitted the deceased in the hospital. In the hospital, police obtained statement Ex.P.1 from PW.1.

9. After perusing the evidence of the private prosecution witnesses PW.1 to PW.17, the following facts are arise:

(i) the marriage between A1 and the deceased was solemnized on 08.03.1998 as per Hindu Rites at Tiruvizhnanthur. Out of the wedlock, two children were born to them. The deceased has committed suicide on 14.05.2004 i.e., after six years of her marriage. It is the evidence of PWs.1 and 2 (parents of the deceased) that A1 was demanding amount from the date of marriage. Accordingly, PW.1 also made some arrangement in purchase of a standard van. However, A1 has sold the above vehicle after six months and again demanded amount. Though the evidence of PWs.1 and 2 shows that the accused was always demanding the amount to go to foreign country, their evidence do not show the specific instance. On the other hand, the entire evidence is only general allegations.

(ii) the deceased was residing in PW.1's house on the date of occurrence. From the evidence of PWs.1 and 2, it is very clear that 15 days prior to the occurrence, the deceased came to their house and was staying in the house. A1 also came there and

residing in their house at that particular time.

(iii) further, the cross-examination of PW.2 clearly shows that while taking the deceased to hospital her daughter never informed anything about the demand of money or dowry by her husband. Therefore, the evidence of PW.1 that on the date of occurrence, the deceased informed him about the demand of dowry creates doubt about the very version of PW.1 about the demand of dowry on the date of occurrence.

10. It is also seen from the evidence of PW3, who is close relative of the deceased that the deceased never complained anything about the alleged act of cruelty caused by her husband on the date of occurrence assumes significance. So also from the evidence of PW.5-Amutha, it is seen that when the oral testimonial of PW.5 was considered along with the evidence along with the evidence of PW3 Murugesan, it is clear that on the date of occurrence, the deceased was normal and she was taking in a normal condition. Thus from the cross-examination of the two close relatives of the deceased, who are PW3 and PW5, apart from the evidence of the parents of the deceased PW.1 and PW.2, this Court finds that on the date of occurrence, the behaviour of the deceased was normal. The conversion of the deceased with the relatives in a normal condition assumes significance in the backdrop of the dying declaration recorded by PW.19-Judicial Officer.

11. On perusal of the dying declaration said to have been given to PW.19-Judicial Officer, it appears that the judicial officer has recorded the dying declaration in the presence of the medical officer on 14.05.2004 at about 11.45 a.m. After satisfying himself about the physical and mental capacity of the deceased to give such a statement under Section 164 Cr.P.C. On a close scanning and scrutinizing of Ex.P.13-dying declaration and the evidence of PW.19-Judicial Magistrate, who had recorded Ex.P.13, I find that the deceased has never complaint anything about the alleged harassment in connection with any demand of dowry. The only solitary statement that appears against the accused in the dying declaration is to the effect that on the date of the occurrence, i.e., on the fateful day, the first accused-husband has asked her as to whether she has any connection with anybody. It appears that being a hypersensitive woman, she has taken this as a suspicion caused by her husband upon her chastity. On assumption that her husband suspects her, she committed suicide. Except the solitary incident of questioning of the deceased by her husband, as to whether she had illegal connection, there is no other harassment or any cruelty either in words or physical was found in the said dying declaration. Further more, there is nothing in Ex.P.13 to indicate regarding any demand of money by the first accused-husband either go to the foreign country or to purchase the car as projected by the prosecution and as spoken by the PWs.1, 2, 3 and 5 assumes significance. Thus the lower Appellate Court on the proper appreciation of Ex.P.13 have come to the correct conclusion that the dying declaration is clear to the

extend that there was no ill-treatment or harassment by her husband in connection with the demand of dowry as projected by the prosecution and it appears that based upon the alleged single incident about the questioning of the first accused on the said date touching upon the chastity, both the courts have taken a view that the same amounts to cruelty.

12. From the evidence, it is very clear that till 09.30 a.m., husband and wife are together and there was no unusual conduct either by husband or wife as spoken to by PW.6. However, the dying declaration clearly shows that the husband has scolded his wife and suspected her fidelity. Such an act of the husband scolding the wife without any reasonable cause and suspecting her fidelity is certainly amounts to wilful conduct which lead her to commit suicide. Though the cruelty in connection with demand of dowry or some other harassment has not been established, the dying declaration of the deceased clearly shows that wilful conduct of the husband in scolding the wife that too suspecting fidelity, as a result, she was forced to commit suicide. Therefore, this Court is of the view that the act of the husband certainly fall under Section 498-(A) IPC. Accordingly, this Court held that the prosecution has proved the charge under Section 498-(A) IPC against A1.

13. On considering the entirety of the circumstances as projected above, this Court is of the considered view that the conviction under Section 498-A IPC against the first accused laid by both the Courts below cannot be interfered and the same is hereby confirmed. However, taking into consideration of the circumstances of the case, the sentence of one year rigorous imprisonment awarded by the lower appellate Court is reduced into six months and the fine imposed by the trial Court is kept intact.

14. This criminal revision case is partly allowed to the extent as indicated above.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

PJL

To

1. The Sessions Judge,
Nagapattinam.

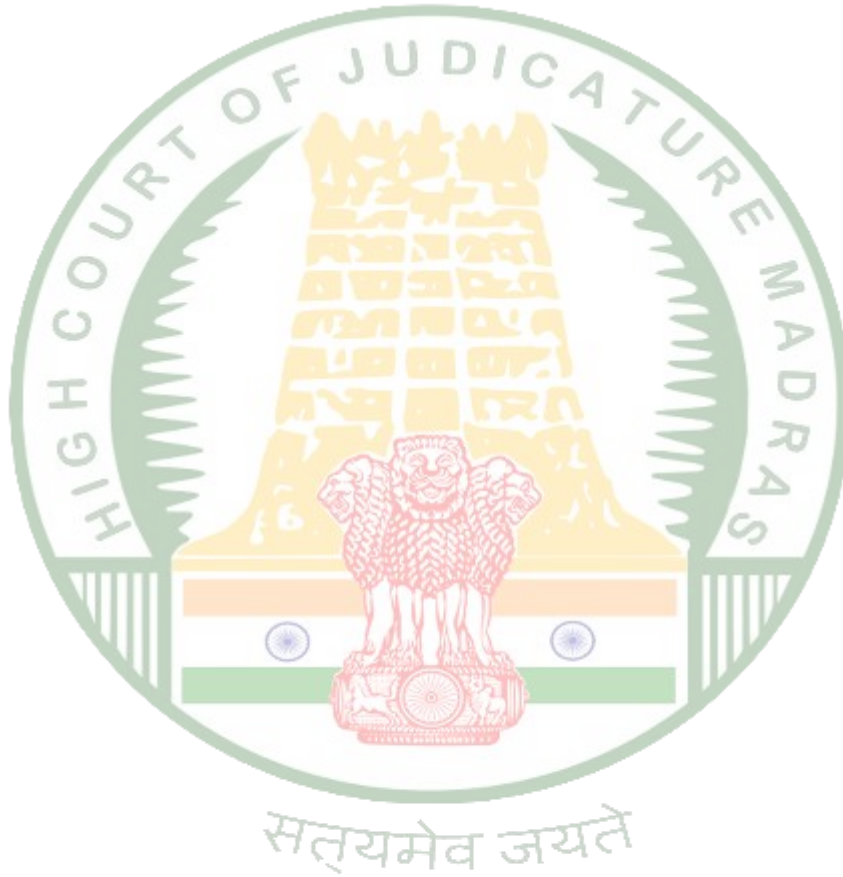
2. Principal Assistant Sessions Judge,
Mayilduthurai.

3.The Deputy Superintendent of Police,
Mayiladuthurai.
All Women Police Station)

4. The section officer,
Criminal Section,
High court
Madras

CRL.R.C.No.1102 of 2011

A.SK(20/02/2019)



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