

Bail Slip

The appellant namely M.Janakaraj, S/o.Muthupandi 1st accused in S.C.No.88/13 on the file of the Mahalir Neethimandram(Fast Track, Mahila court)Tiruppur was directed to be released on bail in MP.NO.1/14 in Crl.A.No.293/14, dated 11.06.2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.03.2019	Pronounced on: 10.04.2019
-------------------------	---------------------------

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.293 of 2014

M.Janakaraj,
S/o.Muthupandi,
No.4/33, Manupatti,
Udumalpet,
Tiruppur District.
Now confined in Central Prison, Coimbatore. Appellant/A-1

/versus/

State by:
The Deputy Superintendent of Police,
Udumalpet Sub-Division,
Tiruppur District.
Dhali P.S.Cr.No.2 of 2003 ... Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 (3) of Cr.P.C to set aside the judgment dated 05.05.2014 made in S.C.No.88 of 2013 on the file of the Learned Mahila Court, Fast Track Mahila Court, Tiruppur.

For Appellant : Mr.V.Krishnamorthy
for Mr.R.Thirumoorthy

For Respondent : Mrs.Kritika Kamal.P
Government Advocate

J U D G M E N T

This appeal is preferred by the accused in Sessions Case No.88 of 2013 on the file of Sessions Judge, Mahila Court, Tiruppur. The appellant was found guilty for offence under Section 306 of I.P.C and sentenced to under 5 years R.I and to pay a fine of Rs.10,000/- in default 6 months S.I.

2. Based on the complaint given by one Thiru.Chitra Pandiyan, father of Maheswari (deceased), First Information Report was registered under Section 174 of Cr.P.C in respect of unnatural death of Maheswari (deceased). On 09.01.2003, at about 12.00 noon, the death has occurred, within 7 years of their marriage between the appellant Janakaraj and deceased Maheswari. The investigation was taken up by the respondent police. Based on the materials collected in the course of investigation particularly, the suicide note of the deceased, the final report was filed against the appellant and his parents.

3. Charges were framed against the appellant and others for offences under Sections 304-B, 406 of I.P.C and Section 4 and 6 of Dowry Prohibition Act.

4. To prove the charges, the prosecution has examined 19 witness namely PW.1 to PW.19. Marked 22 Exhibits (Ex.P.1 to Ex.P.22). On the side of the defence 2 witnesses namely DW.1 and DW.2 were examined. The Forensic (Handwriting) Report and the reasoning sheet were marked as Court Ex.C1 and Ex.C2. 44 material objects were marked which are mostly the alleged Sreedhana articles given during the marriage, including a diary of the year 2002 marked as M.O.43.

5. The trial Court held that the conduct and behaviour of the 1st accused compelling the deceased to give consent for the 2nd marriage with his paramour has made the deceased Maheswari to take the extreme step of committing suicide. Accepting the Ex.P.2 suicide letter of the deceased Maheswari, the Court held that offence under Section 306 of I.P.C is made out. Hence altered the charges under Section 304-B of I.P.C to 306 of I.P.C and convicted.

6. Whereas, A2 and A3 the mother and father of the appellant were acquitted from all charges. For the charge of dowry harassment against all the three accused including the appellant the trial Court has held that the prosecution failed to prove the guilt and acquitted them all.

7. Aggrieved by the said judgment of conviction and sentence for offence under Section 306 of I.P.C the present appeal is preferred.

8. Before advertng to the merits of the case, the background of the prosecution case is extracted below in nutshell:-

On 26.02.2001, Janakaraj and Maheswari got married at Venkatesa Kalyana Mandapam, S.V.Puram, Udumalpet. The appellant was employed as Police Constable in Armed Reserved Police. Within few months on her marriage, the deceased Mageshwari was subjected to dowry harassmt and cruelty. She was forced to aborted her fetus. The accused compelled her to give consent for marrying one Rajeshwari, with whom the appellant was in love. When the accused went for his Commando Training at Chennai during the month of December 2002, he left Maheshwari at her parent home. On 06.01.2003, he came back to Coimbatore and stayed at PW.1 house along with his wife Maheshwari. On 07.01.2003 left Coimbatore along with Maheshwari. He told PW.1 the father of Maheshwari that he is going to Salem to meet his brother-in-law and return back on 11.01.2003. However, on 09.01.2003, PW.1 was informed over phone that Maheswari died consuming cow-dung power at the appellant house in Manupatti. Suspecting foul in the death of his daughter Thiru.Chitra Pandiyan father of Maheswari lodged the complaint (Ex.P.2). After the funeral of Maheswari one Gayathri (PW.15) friend of Maheswari living in the next house had given a bag containing certain documents, which was handed over to her by Maheswari. In that bag, they found the suicide letter (Ex.P.2) addressed to the Superintendent of Police narrating her turmoil's and harassmt at the hands of the appellant and requested the police to take action against her husband (Appellant), if anything un-towards happens to her.

9. The inquest report conducted by Sub-Divisional Magistrate-cum-Sub Collector, Pollachi concluded that the death was not caused due to dowry harassmt, however, a conjoint reading of the depositions of the witnesses leads to an inference that the death has occurred under suspicion circumstances.

10. From the statements of PW.1 and PW.2 parents of the deceased and the letter Ex.P.2, the respondent Police felt that the statement of witnesses and other materials collected in the course of investigation provides a prima facie material for dowry harassmt and dowry death. So the final report was filed alleging the offences of breach of trust, death due to dowry demand and misappropriation.

Case of the appellant:-

11. The learned counsel appearing for the appellant would submit that the investigation in this case was very perfunctory and defective. The prosecution has screened several material evidences which will prove the innocence of the appellant and Maheswari did not commit suicide due to any abetment by the appellant. The F.I.R and final report are contrary to the evidence collected during the course of investigation. The inquest report by the Executive Magistrate has categorically ruled out dowry harassment. While so, final report was filed not only against the appellant husband but also against the father and mother of the appellant, despite evidence, recorded during the inquest had ruled out dowry harassment.

12. The introduction of Ex.P.2 belatedly and not been proved in the manner known to law ought to have been properly appreciated by the trial Court. The prosecution mainly rely upon the alleged suicide note marked as Ex.P.2. In the said suicide note, Maheswari has not whispered anything about the dowry harassment. While so, the prosecution has proceeded based on the fabricated and false statements of PW.1 to PW.4, who are the parents and brother of the deceased Maheshwari. The accident report proves the fact that the Maheswari was taken to the hospital for treatment by the appellant. The doctor who examined had found that Maheswari was conscious. To the doctor Maheswari informed that she has consumed "Saani Powder". She has not said anything incriminating the appellant. While so, the alleged suicide note (Ex.P.2) introduced by the prosecution belatedly contending that the same was given by the deceased to one Gayathri few days before her death and came to light, after two day of the incident is highly unbelievable.

13. Pointing the opinion given by the doctor who conducted the post-mortem and the viscera report, the learned counsel for the appellant would submit that no poisonous substances was found in the viscera. While so, the case of the prosecution that Maheswari died consuming cow-dung which contains poisons substance by name Auramine, is unbelievable.

14. The learned counsel would further submit the charges framed against the accused was for causing dowry death. The trial Court has held that no dowry harassment proved. While so, altering the charge from 304-B of I.P.C as 306 of I.P.C on the ground that the prosecution has proved A1 abated Maheswari to commit suicide in view of his extra marital relationship with one Rajeswari is improper. The non-examination of said Rajeswari with whom the accused/appellant alleged to have

developed extra-marital affair and the non-examination of Dr.Arumugam who alleged to have conducted DNC to abort the fetus, renders the prosecution theory not proved.

15. To buttress his submissions, the learned counsel for the appellant rely upon the following judgments.

(i). Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC 116.

(ii). K.V. Prakash Babu vs State Of Karnataka reported in AIR 2016 SC 5430.

(iii). Manickam Vs. State of Tamil Nadu reported in 2018 (4) MLJ (Cr1) 654.

16. Per contra, the learned Government Advocate appearing for the state would submit that the appellant married Maheswari on 26.02.2011. Maheswari died on 09.01.2003 by consuming cow-dung powder. The remnant found in the bath room, scene of occurrence where Maheswari consumed the cow-dung powder, was sent to laboratory. The lab report Ex.P.17 had disclosed that the sample sent found presence of Auramine which is a poisons basic dye.

17. The learned Government Advocate also circulated the articles written by Associate Professor, HOD Junior Resident, Department of Medicine, in Dr.V.M.Government Medical College, Solapur, Maharashtra, published in "Journal of the Association of Physicians of India" (Volume 65, July 2007) wherein, the authors have opined as under:-

"Cow dung powder is available in 2 types - Auramine-O (Yellow) and malachite green (Green). 1 Auramine is a neurotoxic poison which causes CNS depression. Centrilobular necrosis due to toxic metabolites leading to severe hepatic damage manifested as jaundice, upper abdominal pain, and vomiting. 2 Auramine being a cationic dye causes severe ocular injury on eye contact and damages the gastrointestinal mucosa on ingestion. Chronic effects of Auramine dye include carcinogenicity, mutagenicity and its long-term inhalation leads to pneumoconiosis.

Our all patients had yellowish body discoloration but bilirubin and SGOT/SGPT were normal. Hence, the discoloration of skin could be due to deposition of powder in different parts of the body"

18. Relying upon the opinion of the authors, the Learned Government Advocate would submit that the Dr.Soundarajan (PW.9) who has conducted the autopsy has given the report that small and large intestine of Maheswari was yellow in colour and her intestine was empty.

19. According to the accused, in his statement to RDO, he heard the sound of vomiting from the bath room, so he rushed to the bath room and found his wife Maheswari vomiting in yellow colour. He took her to hospital. The accident report marked as Ex.P.5 also proves the fact that the deceased Maheswari was brought to the hospital by her husband Janagaraj. Since, from the conjoint reading of the evidence coupled with the expert opinion on Auramine (cow dung) poisoning, it is clear that Maheswari has consumed cow-dung powder which contains Auramine poison and immediately after its consumption, she has vomited. The accused has rushed to the bath room and taken her to the hospital. Dr.Ravichandran, (PW.8) admitted her in the hospital, however she died by 12.10 hours. Since, the poisonous substance consumed by her was vomited, her intestine was found empty and no poisonous substance could be found in the viscera test. This does not mean that Maheswari has not consumed cow dung powder, as contended by the learned counsel for the appellant. The effect of the poisonous substance spread over her body particularly, the small and large intestine, which has turned yellow in colour. The Articles published in Journal of the Association of Physicians of India-Volume 65, July 2007 fortifies the case of the prosecution. Hence, non-presence of poisonous substance in the viscera report is not fatal to the prosecution.

20. The learned Government Advocate would further submit that though the accused was charged and tried for offence under Section 304-B I.P.C since, the accused conduct of having extra-marital relationship with Rajeswari and forcing the deceased to give consent has been proved through the suicide letter (Ex.P.2) and the evidence of other prosecution witnesses. Therefore, altering the charge from 304-B of I.P.C to 306 of I.P.C by the trial Court is valid and legally permissible.

21. In support of her contention, the learned Government Advocate has relied upon the following judgments of Hon'ble Supreme Court:-

- (i). Gurnaib Singh Vs. State of Punjab reported in (2013) 7 SCC 108.
- (ii). Narwinder Singh Vs. State of Punjab reported in (2011) 2 SCC 47.
- (iii). Siddaling Vs. The State, Through Kalagi Police Station reported in (2018) 9 SCC 621.

22. The Government Advocate (Criminal Side) submitted that, the Hon'ble Supreme Court has held that having a extra marital affair will fall under the definition of cruelty. The death of Maheswari has been proved due to the abetment of the accused. Referring the suicide letter which is marked as Ex.P.2, the learned Government Advocate would submit that the informations furnished in the said suicide letter, was written in her own hand and same being proved through the handwriting expert opinion. In Ex.P.2, her statement as to circumstances of the transaction which resulted in her death is made out. She has specifically mentioned that her husband is forcing her to commit suicide. In that note, which is the letter addressed to the Superintendent of Police, she has stated that since the appellant is a Police Constable, he is addressing the Superintendent of Police. In this letter she has narrated all the important events about her marriage life and the compulsion of the accused, which forces her to take the extreme decision of committing suicide.

23. The learned Government Advocate would contend that the deceased Mahesawari has taken the extreme step to end her life, not merely because of the extra marital relationship of her husband but the compulsion exerted on her, by her husband to give consent for his bigamous marriage. Therefore, the judgment of Hon'ble Supreme Court referred by the learned counsel for the appellant is not applicable and the judgment rendered by the Supreme Court recently in Siddaling Vs. The State, Through Kalagi Police Station, alone is applicable to the fact of the present case.

24. Before adverting to the disputed facts and law, for better understanding of this case, the admitted facts not controverted is stated below.

25. The appellant Janagaraj and Maheswari got married on 26.02.2001. Maheswari was brought to the hospital by her husband Janagaraj. On 09.01.2003, at about 10.00 a.m and was admitted in the Government Hospital, Udumalpet allegedly consumed Shani powder. Maheswari died at 12.10 hrs. The viscera report of Maheswari's indicates no poison deducted in the below said contents.

1. Stomach and its contents
2. Intestine and its contents
3. Liver
4. Kidney
5. Preservative.

26. The police sergeant has opined that Maheswari died of some poisoning, which is not deducted by Chemical Examiner. Pursuant to the complaint, the Investigation Officer gone to the SOC, the house of the accused, at Manupatti Village, Udumalai Taluk, within the jurisdiction of respondent police. In the presence of Village Administrative Officer, from the bath room, a white colour plastic box containing remanence of yellow colour substance was recovered. The observation mahazar prepared by the Investigation Officer indicate that a greenish yellow colour liquid was found spread over on the bath room floor. The plastic box containing the remnant powder was sent for chemical analysis. The chemical examiner tested the yellowish strains found on the inner and outer surface of the plastic container and deducted Auramine in the washings. The note to the Chemical analyst report Ex.P.17 indicates that Auramine is a poisonous basic dye.

27. From the Articles, written by the experts which published in the "Journal of the Association of physicians of India" - (Volume 65, July 2017), one can understand that the synthetic yellow colour powder containing Auramine is sold in grocery shops as cow-dung powder. The finding in the said research paper on cow-dung powder, with 25 patients is as below:-

"Results and Conclusion: Synthetic yellow cow dung powder poisoning was common in young age group and females. Vomiting, respiratory depression were common symptoms. Synthetic yellow cow dung powder poisoning was needed only symptomatic treatment. It was very rare and mortality is low when treated promptly."

28. Two days prior to the death of Maheswari, the accused after completing his commando training at Chennai had gone to his father-in-law house at Peelamedupudur, Coimbatore. He stayed with Maheswari on 06.01.2003 and 07.01.2003. Left Peelamedupudur village, along with Maheswari informing Chitra Pandiyan (PW.1) that he will return back with Maheswari on 11.01.2003. Then, he proceeding to Salem to meet his brother-in-law. Maheshwari has died consuming cow-dung powder on 09.01.2003 at Manupatti in the resident of the appellant.

29. The disputed facts are as under:-

The appellant and Maheswari though married on 26.02.2001, they were happy only for few months and there was demand for dowry Rs.20,000/- which was given to the accused for purchase of two wheeler. During their marriage, 50 sovereigns of jewels was given to the accused. The accused was demanding

Rs.3,00,000/- or a house at Peelamedupudur Village, Coimbatore. The accused had illicit intimacy with one Rajeswari. He was pestering Maheswari to give her consent for marrying Rajeswari. The accused forced Maheswari to abort on earlier occasions. The cruelty meted out by Maheswari was known to her parents and brothers. The accused frequently used to leave Maheswari at her parental home. Maheswari left an undated letter addressed to Superintendent of Police, complaining about the accused that he is forcing her to commit suicide.

30. To prove the above said disputed facts, the prosecution has examined 19 witnesses. Marked 22 Exhibits and 44 material objects. Besides these evidences, the trial Court marked 2 Court documents Ex.C1 and Ex.C.2. On the side of the defence 2 witnesses namely DW.1 and DW.2 and 1 Exhibit namely Ex.D.1 were marked.

31. Besides the testimony of PW.1 to PW.5, the parents and brothers of the deceased Maheswari, the prosecution has examined one Gayathri (PW.15), under whose custody the letter Ex.P.2 was at the time of Maheswari death.

32. To prove his innocence, the accused himself has mounted the witness box. He was examined as DW.1. He has deposed that between 11.12.2002 and 03.01.2003, he was at Chennai, undergoing Commando Training. He has also examined Nagarajan, Sub-Inspector of Police attached to Coimbatore District, Armed Reserve Police Force. The evidence of DW.1 (Janakarajan) and DW.2 (Nagaraj) as well as the Ex.D.1 (Certificate issued by the Inspector of Police, Armed Reserve Police) marked on behalf of the defence, proves the following facts.

- The accused, at the time of occurrence was Police Constable in Armed Force at Coimbatore District.
- Between 13.11.2002 and 03.01.2003, he was at Chennai, specifically on 29.12.2002, he was at Commando Training School at Verapuram, Chennai.

33. Though the appellant and his parents were prosecuted for offences under Sections 304-B of I.P.C, 406 I.P.C and Section 4 and 6 of Dowry Prohibition Act, they were all acquitted for these offences. The appellant alone was convicted for altered charge under Section 306 of I.P.C. The trial Court has held that there is no proof, that Maheswari was subjected to dowry torture or harassment. The Executive Magistrate who conducted the inquest immediately after the death of Maheswari has also given the report that her death is not due to dowry harassment or cruelty. Thus through evidence, it is ruled out

that Maheswari did not commit suicide due to dowry harassment or cruelty. In the course of trial, from the material placed before the Court particularly the letter (Ex.P.2) which is found to be written by the deceased Maheswari through the hand-writing expert opinion marked as Ex.C1 and Ex.C.2, the trial Court has concluded that due to the extra marital affair of the appellant, the Maheswari was forced to take the extreme decision of committing suicide.

34. The learned counsel for the appellant would first contend that there was no abetment for Maheswari to commit suicide. The prosecution has failed to mark the letters written by the accused to his lover, which has been alleged to have been produced by Chitra Pandiyan (PW.1) to the police along with the suicide letter (Ex.P.2) on 14.01.2003. The diary used by the accused was also not marked by the prosecution. He would also contend that they were few other letters written by Maheswari, accusing her parents and brothers which would prove the innocence of the appellant. Since, those documents were detrimental to the prosecution, same was not marked as Exhibits.

35. Referring the judgment of Hon'ble Supreme Court in Sharad Birdhi Chand Sarda Vs. State Of Maharashtra reported in (1984) 4 SCC 116, wherein, the Hon'ble Supreme Court has extracted certain points noted below regarding the suicidal pact mentioned in the book 'Death, Society and Human Experience' written by an eminent psychiatrist, Robert J. Kastenbaum.

"The fact is that some people who commit suicide can be classified as psychotic or severely disturbed.

- If we are concerned with the probability of suicide in very large populations, then mental and emotional disorder is a relevant variable to consider.
- And it is only through a gross distortion of the actual circumstances that one could claim all suicides are enacted in a spell of madness.
- "Seen in these terms, suicide is simply one of the ways in which a relatively weak member of society loses out in the jungle like struggle.

- The individual does not destroy himself in hope of thereby achieving a noble post-mortem reputation or a place among the eternally blessed. Instead he wishes to subtract himself from a life whose quality seems a worse evil than death.
- The newly awakened spirit of hope and progress soon became shadowed by a sense of disappointment and resignation that, it sometimes seemed, only death could swallow.
- Revenge fantasies and their association with suicide are well known to people who give ear to those in emotional distress."
- "People who attempt suicide for reasons other than revenge may also act on the assumption that, in a sense, they will survive the death to benefit by its effect."

36. The learned counsel appearing for the appellant would submit that the deceased Maheswari was emotionally disturbed severally. If all her writings were placed before the Court and tested with the letters which she has written to the Superintendent of Police, the trial Court would have come to a right conclusion that the Maheswari was not abated by the accused to commit suicide. According to the prosecution, the alleged letter Ex.P.2 was produced by PW.15 (Gayathri) on 10.01.2003. Two days after Maheswari death. Whereas, PW.1 (Chithra Pandiyan) has handed over the letter to the police only after 4 days. While filing the final report and framing of charge, there is no whisper about the letter or the abetment alleging the appellant was harassing the deceased to give consent for his 2nd marriage.

37. Relying upon the judgment of the Hon'ble Supreme Court in K.V. Prakash Babu Vs. State Of Karnataka cited supra; which has held that, extra-marital relationship, even if proved, would not be the ground for convicting for the offence of abetment, unless, it has led to high degree of mental cruelty.

38. The above said judgment to some extent go along with the facts of the case in hand. Wherein, the Hon'ble Supreme Court, after considering its earlier judgments has held in paragraphs 14 and 15.

14. In this regard, Mr. Singh has drawn our attention to the authority in Pinakin Mahipatray Rawal v. State of Gujarat 2003 (10) SCC 48. In the said case, the Court was dealing with as to whether relationship between the appellant and the second accused therein was extra-marital leading to cruelty within the meaning of Section 498-A IPC and whether that would amount to abetment leading to the act of suicide within the meaning of Section 306 IPC. Dealing with the extra-marital relationship, the Court has opined that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their upbringing, services in the home, support, affection, love, liking and so on, but extra-marital relationship as such is not defined in the IPC. The Court analyzing further in the context of Section 498A observed that the mere fact that the husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498-A IPC. The Court further elucidated that harassment need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. The Court ruled that in the facts of the said case the alleged extra-marital relationship was not of such a nature as to drive the wife to commit suicide. The two-Judge Bench further opined that:- "Section 306 refers to abetment of

suicide which says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide."

15. Slightly recently in Ghusabhai Raisangbhai Chorasiya v. State of Gujarat (2015 (11) SCC 753), the Court perusing the material on record opined that even if the illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the explanation (a) to Section 498-A of the IPC which includes cruelty to drive the woman to commit suicide, would not be attracted. The relevant passage from the said authority is reproduced below:-

"True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498A, IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in Pinakin Mahipatray Rawal (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant no.4, but in the absence of some other acceptable evidence on

record that can establish such high degree of mental cruelty, the Explanation to Section 498-A which includes cruelty to drive a woman to commit suicide, would not be attracted."

39. However, the Learned Government Advocate would circulate the other judgment of the Supreme Court which was rendered in Siddaling Vs. The state, through Kalagi Police Station reported in (2018) 9SCC 621, wherein, the Hon'ble Supreme Court has held that:-

"8. As held in Randhir Singh V. State of Punjab, (2004) 13 SCC 129 vide para 12, abetment involves a mental process of instigating a person or in any manner aiding that person in doing of the thing. Courts should carefully assess the facts of each case before deciding whether the cruelty meted out to the victim which induces her to commit suicide.

9. In the case case in hand, the witnesses - PW-1, PW-6, PW- 10 and PW-22 have clearly in their statement stated that the appellant continued his relation with another woman. The appellant's illicit relation with another woman would have definitely created the psychological imbalance to the deceased which led her to take the extreme step of committing suicide. It cannot be said that the appellant's act of having illicit relationship with another woman would not have affected to negate the ingredients of Sections 306 I.P.C.

10. In our considered view, based upon the evidence and also Agreement dated 22nd June, 2002, the High Court has rightly maintained the conviction of the appellant under Sections 498-A and 306 I.P.C."

40. In the above said legal and factual background, it is clear that the entire case of the prosecution hinge upon the suicide letter marked as Ex.P.2. From the deposition of PW.1 to PW.4, it is clear that they have not spoken the full truth about the real marital discord between the accused and Maheswari. Their evidence is embellished with statements not proved. The assertion of dowry harassment found to be total false exposed even at the time of inquest report conducted by RDO. His report which is marked as Ex.P.15 has ruled out dowry harassment and cruelty. Despite that the prosecution has ventured to proceed against the appellant and his parents for offence under Section 304-B of I.P.C and Section 4 and 6 of Dowry Prohibition Act, on

account of the statements of Maheswari family members. Even the suicide letter which is heavily relied by the Court to convict the appellant has given a clean chit to her parents-in-law A2 and A3.

41. Be it as it may, if the prosecution would be able to establish that the appellant had abetted Maheswari to commit suicide, then the trial Court judgment can sustain. As far as, the trial Court is concerned, it has relied upon the suicide letter marked as Ex.P.2, the evidence of Gayathri (PW.15) and the handwriting expert opinion, Ex.C-1 and Ex.C.2 to hold the appellant guilty. While appreciating the evidence it has failed to note that the letter is not dated, the narration of facts as found in Ex.P.2 letter would indicate that this letter would not have been written soon before the death of Maheswari or even within a reasonable proximate time before her death. The letter Ex.P.2 runs to 7 pages. It is addressed to Superintendent of Police. The letter was in possession of the neighbour Gayathri (PW.15) who has handed over the same to Chitra Pandiyan (PW.1) a day next to Maheshwari's death, saying that 15 days before her death, the deceased gave a bag to her. Maheswari told her that, it contains her certificates and she leaves it in her custody since, she fears, her husband will destroy it. Chitra Pandiyan (PW.1) has not immediately informed the same to the police. He has taken four days to inform about this letter to the Police. He has not handed over the entire content of the bag, which PW.1 alleged to have been received from Gayathri. The documents were given to the police in piecemeal.

42. In fact, the prosecution while sending Ex.P.2 letter for handwriting expert opinion, has not sent a proper standard document containing the admitted handwriting of the deceased, to compare the same with the questionable writing. They did not mark the opinion of the expert earlier which has ended in acquittal of the accused. Only on the revision preferred by PW.1, the case was remanded back for examination of PW.19 and for marking of documents. Thereafter, the trial Court has considered the letter (Ex.P.2) in the light of the opinion given by PW.19, which is marked as Expert Report (Ex.C.1) and Reasoning Sheet (Ex.C.2) and has held against the accused.

43. While considering Ex.P.2, the trial Court ought to have gone into the content of the letter scrupulously. Section 32 of the Indian Evidence Act reads as below:-

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-

Statements, written or verbal, of relevant facts made by a person who is dead, or who

cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) When it relates to cause of death. -When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

44. The reading of Ex.P.2 written in vernacular we see it starts from the fact of marriage between her and the accused on 26.02.2001. She has stated about her short lived happy marriage life for three months. During May 2001, the accused has left for election duty, the deceased has recorded that only thereafter, the accused has developed disliking towards her. He has expressed his concern for not impregnating her. She has stated that in the month of August-2001, she got conceived but aborted on 13th of August. Again she got conceived. She was staying in her parents house. On 25th October 2011, she and the accused attended a marriage at Manupatti Village (native place of accused). She has mentioned about a incident, which happened when they were returning back to Peelamadupudur Village, Coimbatore. The accused has asked Maheswari to get down at Kurichikottai, Udumalpet, one stop before Peelamadupudur, Village. There, the accused took her to Doctor by name Arumugam. The accused alone went inside and spoke to the Doctor, then she went in to see the Doctor. The Doctor told her that, husband informed him to abort since they have proposed to go Delhi Tour. So, he is going inject her for abortion. She agreed since if she deny, it will be a disgrace to her husband. On 4th November 2001, she was not able to accompany the appellant to the marriage, due to her ill-health. The accused forced her to take some medicine saying that, she should not give birth to a female child. If, she give birth to female child, she has to live as a destitute. Fearing the repercussion, she consumed the medicine. Before the appellant could come back, she vomited and got sore throat. The next day, she left the Manupatti Village, Udumalpet, the residence of the appellant and went to her

parents house, on 10th November 2001, she suffered abortion. She was taken to Megala Hospital, after taking scan, the Doctor advised to do DNC since, her husband was at Bhavanisagar at that time, her mother signed the document consenting DNC. Pointing out her dental caries, her husband has expressed his view of getting divorce by consent. When she decline to give divorce, he threatened her that, he will commit suicide. He also told her that he was love with a girl. She should go and seek him alliance and arrange for the 2nd marriage. When she informed this to the parents of the appellant, they told her that for one year from the marriage, he is passing through bad time. If they scold him, he will commit suicide so, request her to wait for one year. Then, she has recorded that she has only heard of harassment by mother-in-law and father-in-law, but she suffers harassment at the hands of her husband. He threatens her that there is no evidence to prove the marriage since, he is in Police Department, she can't do anything.

45. With the narration of these facts, she has concluded that, she is frustrated with her life and in the mood of committing suicide. She don't want to put her parents suffering. If anything untoward happens to her, her husband is responsible for it. After affixing her signature, as a Appendix, she has stated in the next page that the appellant has tattoo the name of his lover on the left side of his chest and his name of the right side. He is again and again abetting her to commit suicide. If anything happens to her, only her husband is responsible. Therefore, he must be punished suitably. Again she has signed.

46. In this letter, nowhere she has mentioned about any dowry harassment. After concluding her letter and signing, in a separate sheet, she has made the disclosure that the accused has tattoo the name of his lover on the left side and his name on the right side.

47. It is the case of prosecution witnesses PW.1 to PW.4 that it was one Rajeswari with whom the accused had affair. The Investigation Officer admits that he recorded the statement of Rajeswari, but she was not examined as witness. The Investigation Officer has not even collected any materials to ascertain whether really the accused has tattoo any name on his chest. The last page of the letter, Ex.P.2 is disjoint and independent of the First six pages. At the start of her letter, she has mentioned that the appellant is serving in Erode, Armed Force Division. Whereas, the evidence regarding the service details of the appellant reveals that before the occurrence, the accused was at Coimbatore District, Armed Force and sent for Commando training between 13.11.2002 to 03.01.2003. The narration of incidence as found from the letter of the deceased appears that this letter was not written while she was staying

at her parents home for two months and before leaving her parents house on 06.01.2003. The proximity of suicide and the alleged letter appears to be very remote.

48. Except the interested witness PW.1 and PW.2, there is no other evidence to ascertain the existence of the character Rajeswari and appellant having any affair with her. There is no material to indicate that the appellant had really driven Maheswari to commit suicide, due to his extra-marital relationship with one Rajeswari. The letter Ex.P.2 as well as evidence of PW.1 indicates that the accused had tattooed the name of Rajewari on his left side chest. Whether any physical examination of his body to ascertain this fact done by the Investigation Officer or not, is left to the Courts imagination.

49. Immediately after Maheshwari consumed cow-dung powder the appellant had taken her to the hospital. When she was taken to the hospital, Maheswari was alive. If really, the accused has abated Maheswari to commit suicide, his conduct would have been otherwise. The content of the letter Ex.P.2 stops with incidents occurred almost one year prior to the occurrence. The very letter (Ex.P.2) which had suddenly surfaced, after two days of the demise of the deceased, that to not from the residence of her parent or the residence of the husband, but from a third party, saying that it contains Maheshwari certificate and produced to the police after four days appears to be a total make belief statement of witnesses to introduce this document. The standard writing sent for comparison also there is doubt whether the long size note book sent subsequently for comparison really the note book containing the admitted hand writing of Maheswari.

50. When there is a serious lacuna in the prosecution case, convicting the accused solely relying upon a undated letter, which does not indicate any cruelty soon before death, is unsafe. Furthermore, yet another fact which creates doubt about the prosecution case is that, when the materials relied by the prosecution discloses the extra-marital affair of the appellant with one Rajeswari and if the deceased was actually disturbed by that, the accused should have been tried for the said offence but the charge framed against the accused does not whisper about this fact.

51. To sum up, this Court finds that the suicide letter marked as Ex.P.2 not proved that it was written by the deceased soon before her death. Further the standard writing sent for comparison was not corroborated through any evidence to prove that writings in Ex.P.2 was compared with the standard writing of the deceased Maheswari. When several documents containing admitted writings of Maheswari available, the prosecution has sent the note book, which does not indicate it was her note book

and contains the hand writing of Maheswari. Though a audio cassette has been marked as M.O.1, the prosecution has not taken any care to transcript the content of the audio cassette.

52. Assuming the letter Ex.P.2 was written by the deceased Maheswari, the narration of events stopped with the month of November 2001 whereas, she has committed suicide on 09.01.2003.

53. As stated by the Hon'ble Supreme Court in Sharad Birbhichand Sarda Vs. State of Maharashtra cited supra, the suicidal tendency either due to sustain torture or by impulse should have been proved by evidence. The depositions of PW.1 to PW.4 are full of falsehood, embellishment and more of exaggeration. Apart from the suicide note marked as Ex.P.2, there is no incriminating evidence to infer the death of Maheswari was due to abetment of the Appellant.

54. In the light of the above facts and circumstances, conviction held by the trial Court is liable to be set aside. Accordingly the Criminal Appeal is allowed. The trial Court judgment is set-aside. Bail bond stands discharged. Fine amount paid if any, shall be refunded.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To,

1. The Sessions Judge,
Mahila Court, Fast Track Mahila Court, Tiruppur.

2. The Deputy Superintendent of Police, Udumalpet Sub-Division,
Tiruppur District.

3. The Public Prosecutor, High Court, Madras.

4. The Section Officer, Criminal Section (Records), High Court, Madras.

5.The Judicial Magistrate No-1,
Udumalpet.

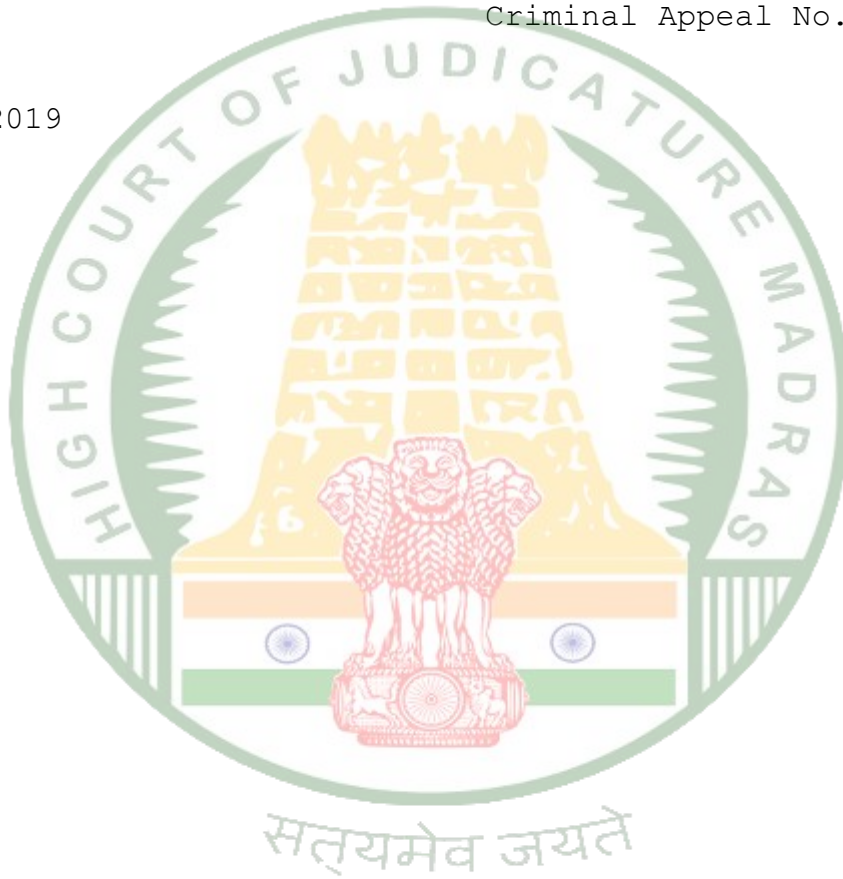
6.The Chief Judicial Magistrate,
Thiruppur district.

7.The Superintendent,
Central Prison, Coimbatore.

+lcc to Mr.R.Thirumoorthy, Advocate sr.35843

Criminal Appeal No.293 of 2014

ssi(co)
nr 21/06/2019



WEB COPY