

BAIL SLIP

The Appellant / Accused No.1 namely D.Joshua Daniel, S/o.Mr.Devasagayam, was directed to be released on bail vide order dated 06.03.2014 made in CrI.MP.No.1 of 2014 in CrI.A.No.67 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.67 of 2012

D.Joshua Daniel,
S/o.Mr.Devasagayam,
No.5, Thamari Street,
Thiruvalluvar Nagar, Avadi,
Chennai. Appellant/Accused No.1

/versus/

State represented by
The Inspector of Police,
W-5, All Women Police Station,
Vepery, Chennai-600 007.
Crime No.2 of 2011 ... Respondent/Complainant

Prayer:-

Criminal Appeal is filed under Section 374 of Criminal Procedure Code, 1973, praying to call for the records and judgment in S.C.No.77 of 2012 dated 20.01.2014 passed by the Hon'ble Mahila Court, Chennai-600 001, and set aside the same.

For Appellant : Mr.K.Thenrajan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (CrI.Side)

J U D G M E N T

The appellant before this Court is the 1st accused tried by the Mahila Court, Chennai in S.C.No.77 of 2012. The defacto complainant is wife of the appellant. Based on the complaint given by Mahalakshmi wife of the appellant, case was registered against the appellant and one Kerana Pukaresan Joseph.

2. The gist of the complaint by Mahalakshmi is that Mahalakshmi and Joshua Denial (Appellant) got married on 29.08.2003. They were blessed with two children. Till 2008, their marital life was very peaceful. After Kerana Pukaresan Joseph (A2) came into the life of A1, the attitude of A1 changed. He started harassing the defacto complainant. He caused cruelty by physical assault and abuse. During the month of September-2009, the appellant went to Singapore to take up a job. The defacto complainant along with her children joined him after a month. They all were living for some time but due to attempt on the life of the defacto complainant by the appellant, she informed the matter to her parents at Chennai. They went to Singapore and took back the defacto complainant and her children to Chennai. While so, the appellant who lost his job at Singapore, came back to Chennai and joined his family. However, the relationship did not improved. There was an attempt on the life of the defacto complainant again by the appellant. He forcibly administering thyroid tablet. He tried to kill her, by covering her face with plastic cover to cause suffocation. There was attempt by the appellant to inject empty syringe to cause break in the flow of blood thereby will cause heart attack. The sale proceeds of Maruti Car stood in the name of the de facto complainant and the share of the property sold by her father were all appropriated by the appellant, to enrich the 2nd respondent, to whom he had illicit affairs. With these allegations, the charges were framed against the appellant for offences under Sections 498-A, 307, 406, 506 (ii) of I.P.C. Along with the appellant, Kerana Pukaresan Joseph was arrayed as A2 and charged for abating A1 for attempt to commit murder.

3. Before the trial Court, the prosecution has examined 10 witnesses. 13 Exhibits and 13 material objects were marked through these witnesses. In defence one Bhuvaneshwari was examined as DW.1. 3 Exhibits were marked as DW.1 to DW.3. The voucher and other related documents given by the Manager of Poigai accommodation located at Razak Garden Road, Arumbakkam, where the appellant was arrested and incriminating materials seized are marked as Court Exhibit.

4. The trial Court, after considering the evidence adduced by the prosecution as well as defence held that A1 guilty for offence under Section 498-A and 307 of I.P.C., acquitted him for other charges and exonerated A2 from charges under Section 307 r/w 109 of I.P.C.

5. Aggrieved by the conviction and sentence the present appeal is filed by the appellant.

6. It is contention by the learned counsel for the appellant that the de facto PW.1-Mahalakshmi had given three

different complaints on three different dates, showing three different address against the Appellant. First, she gave a complaint before Ambattur All Women Police Station, alleging extra marital affairs of her husband with the 2nd accused, that was enquired and closed by the police. Since her attempt to penalise the appellant failed, she gave the address of PW.5 as place of residence and approached Vepary All Women Police Station with different set of facts. That complaint was taken as C.S.R. It was enquired and based on the compromise between the appellant and the defacto complainant same was recorded and closed. Then again, the present complaint was given with different set of facts, more particularly, alleging that on the instigation of A2, the appellant attempt to murder her by injecting empty syringe and certain new facts alleging there was an earlier attempt on her life, when they were at Singapore. The witnesses for the prosecution were all relatives and known person of PW.1 for none of the incidents alleged by PW.1, they were witnesses. In fact, PW.1 a locally influential person has instigated PW.1 to file false complaint against the appellant.

7. The learned counsel for the appellant would specifically submit that the charge of attempt to commit murder has not been substantiated by the prosecution through the witnesses. The Investigation Officer, Ariyamala (PW.10) has not collected any material to substantiate or corroborate the version of PW.1. Insofar as the alleged attempt to commit murder, the learned counsel would submit that the trial Court had been miserably carried away by certain extraneous facts placed by the prosecution. The photographs and the incriminating materials alleged to have been recovered from the lodge, where, Joshua Daniel (A1) was staying does not indicate any criminal ingredient against the appellant. The learned counsel would also submit that the Poigai lodge voucher Ex.C1 and the other materials indicates that it was Mr.James Vincent, the brother of the appellant was staying in the said lodge and not the appellant.

8. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the sustained cruelty meted out by Mahalakshmi (PW.1), after 2008 has been vividly narrated by the victim through her complainants. Mahalakshmi (PW.1) has not placed all the cruelties, she has met at the hands of the appellant and his attempt on her life in the earlier complaints, with the intention to save her marital relationship. Since, she has felt that the breakdown has reached a point of no return, she has come out with all the facts before the police by way of a complaint and she has also deposed before the Court about the incidents. She was incisively cross examined at length by the defence, on each and every aspects, which she had understood and

explained the events. Touching upon the cruelty, she has met at the hand of the appellant, on the instigation of A-2 and the attempts on her life, are all incidents which has occurred in privacy, when the appellant and PW.1 were alone. It can be narrated only by PW.1. All other witnesses can only be hearsay. For that reason, the reliability of PW.1 and other witnesses, who are the mother, brother and uncle of PW.1 who have privy to the information cannot be doubted.

9. The learned Government Advocate (Crl.Side) would submit that PW.1 in her evidence has deposed that on 03.03.2011, the accused inserted the empty syringe. She took treatment at Purasavakkam Hospital on 04.03.2011, thereafter, she has also felt that there is no point in enduring the torture. Hence, she has gone to All Women Police Station, Ambuttur lodged the complaint on 08.05.2011 and thereafter, to Vepery Police Station on 09.05.2011 at last, to the present complaint on 09.07.2011. Therefore, submitted that the conviction of the trial Court has to be confirmed.

10. Heard the respective counsels and perused the records.

11. The relationship between the appellant and P.W.1 is an admitted fact. From the record, it also seen that the sister of PW.1 has married the brother of the appellant. The marital relationship between the appellant and the defacto complainant has got stained, during the year 2008 and got worsed, when the family was at Singapore. Abruptly, they have returned back to India while PW.1 would say that the cruelty meted out by her at the hand of the appellant had forced her to come back to India along with the children. Whereas, the reason given by the appellant, to return back to India is something different. In any event, the tenor of the complaints dated 23.03.2011, 08.05.2011, 09.05.2011 clearly centres around the discord among the appellant and the PW.1, due to the extra marital relationship, which the appellant has developed with the 2nd accused. The photographs lifted from the laptop kept by the appellant/accused, the incriminating materials like passport of A2, personal belongings of A2, including wearing apparent in the possession of A1, all would indicate that due to the extra marital relationship PW.1 was subjected to matrimonial cruelty and harassment.

12. Initially, the appellant has deserted PW.1 and her children and gone out of contact. This has prompted PW.1 to give complaint on 23.03.2011, to the Ambuttur All Women Police Station, regarding missing of her husband. Thereafter, she has approached the Vepery Police Station to lodge the complaint on 08.05.2011, wherein, she has made a specific allegation about the extra marital relationship between the appellant and the 2nd

accused.

13. The third complaint which is the subject matter of the trial and the present appeal was on 09.07.2011, wherein, the narration of the events has been detailed.

14. In the entire cross examination by the appellant with PW.1, he could not make out any serious dent or doubt in her testimony, except her failure to lodge the complaint immediately at Singapore when she faced cruelty and about attempt on her life. Likewise, certain suggestions attributing infidelity of PW.1 has also been made to her but it could be only seen as a counter for the appellant who had been alleged for promiscuous relationship with the 2nd appellant. To the various materials collected during the investigation, even, if the benefit of doubt is extended to the appellant, regarding the charge, he had attempted the life of his wife Mahalakshmi (PW.1), the very fact that he subjected PW.1 with cruelty and continuously harassing her is well proved. Therefore, this Court, while granting benefit of doubt to the appellant for the charge under Section 307 of I.P.C. Confirms the finding of the trial Court holding him guilty for offence under Section 498 of I.P.C.

15. The peaceful martial life of PW.1 had been disturbed and destroyed by the appellant, due to his unjustifiable desire. The life of two young children is also now under peril. In the light of the above fact, this Court is not inclined to interfere the sentence imposed on the appellant by the trial Court.

16. In the result, the Criminal Appeal is Partly Allowed. The conviction and sentence of 3 years R.I and fine of Rs.5,000/- imposed by the trial Court on the appellant for the offence under Section 498(A) of I.P.C is confirmed. Conviction and sentence imposed on him for offence under Section 307 of I.P.C is set aside. The accused shall be secured and committed to prison to undergo the remaining period of sentence. The period of imprisonment already undergone shall be set off under Section 428 of Cr.P.C

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bsm

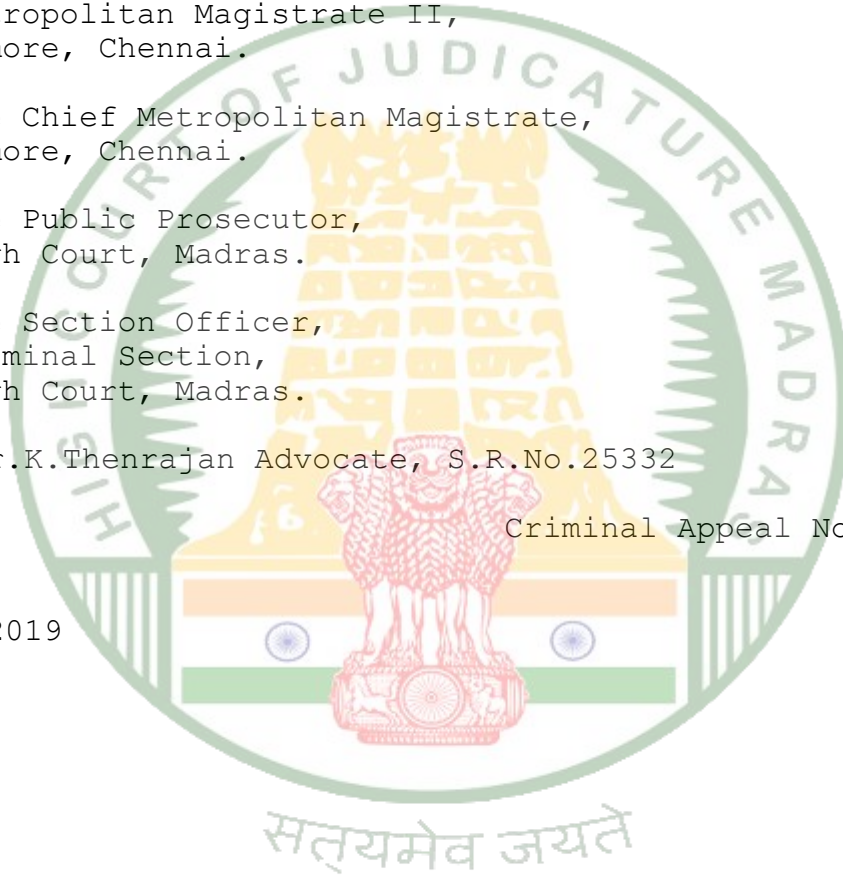
To

1. The Mahila Court, Chennai.
2. The Inspector of Police,
W-5, All Women Police Station,
Vepery, Chennai.
3. The Superintendent,
Central Prison, Puzhal,
Chennai.
4. Metropolitan Magistrate II,
Egmore, Chennai.
5. The Chief Metropolitan Magistrate,
Egmore, Chennai.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.Thenrajan Advocate, S.R.No.25332

Criminal Appeal No.67 of 2014

RSI (CO)
CS/26/06/2019



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