

**Bail Slip**

Mr.M.Vijayan, S/o.Mariappan @ Marimuthu aged about 29 years was released on bail vide order dated 27.04.2012 in MP(MD)No.2/2012 in CRL A(MD)No.495 of 2010.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 26.07.2019****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Crl.A.(MD)No.495 of 2010**

M.Vijayan

... Appellant/Accused

Vs.

The State Rep. by,
The Deputy Superintendent of Police,
Lalgudi,
Tiruchirapalli District.
(Crime No.1087 of 2008)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to set aside the judgment passed on the file of the learned Sessions Judge, Mahila Court, Tiruchirapalli in S.C.No.204 of 2009, dated 22.11.2010.

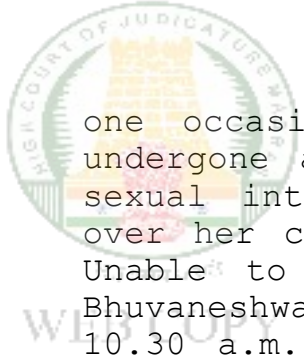
For Appellant	: Mr.N.Anand Kumar
For Respondent	: Mr.A.Robinson
	Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted and sentenced vide judgment dated 22.11.2010 in S.C.No.204 of 2009, on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli as follows:-

"Conviction : *Convicted U/s.498(A) of IPC to undergo 2 years R.I. and fine of Rs.1,000/-, I/D to undergo S.I. for three months. Convicted U/s.304(b) of IPC to undergo 7 years R.I. and fine of Rs.1,000/-, I/d to undergo S.I. for three months. Convicted under Section 4 of Dowry Prohibition Act to undergo 1 year R.I. and fine of Rs.1,000/-, I/d to undergo S.I. for three months"*

2.The prosecution case is that the appellant got married to Bhuvaneshwari on 09.07.2008. It was alleged that the appellant demanded dowry from his wife and that this caused strain in their relationship. Bhuvaneshwari left the matrimonial home on more than



one occasion. Panchayat was also conducted. Bhuvaneshwari had undergone an operation and she was medically advised not to have sexual intercourse. The appellant allegedly developed suspicion over her character and compelled her to agree for mutual divorce. Unable to bear the harassment at the hands of the appellant, Bhuvaneshwari committed suicide by hanging on 08.12.2008 at about 10.30 a.m. In this regard, the father of Bhuvaneshwari lodged Ex.P.1/complaint before Lalgudi Police Station. Ex.P.11/FIR in Crime No.1087 of 2008 was registered under Section 174 of Cr.P.C. Investigation was undertaken and after completion of all usual formalities, final report was filed before the learned Judicial Magistrate, Lalgudi. The case was committed to Sessions Court vide P.R.C.No.4 of 2009. It was made over to the file of the learned Mahila Court/Sessions Judge, Tiruchirappalli in .C.No.204 of 2009. Charges were framed against the appellant under Section 498(A), 304 (B) and 306 of I.P.C. and Section 4 of Dowry Prohibition Act. The appellant denied the charges and claimed to be tried.

3.The prosecution examined as many as 12 witnesses and marked Exs.1 to 13. M.O.1 and M.O.2 were also marked. On the side of the accused no evidence was adduced.

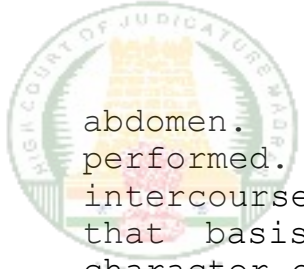
4.The learned Trial Judge while acquitting the appellant for the charge under Section 306 of I.P.C. convicted and sentenced the appellant as mentioned above. Challenging the same, this criminal appeal has been filed.

5.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and wanted this Court to reverse the judgment of the Court below.

6.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment does not warrant any interference and wanted this Court to dismiss the appeal.

7.I carefully considered the rival contentions and perused the evidence on record.

8.It is not in dispute that Bhuvaneshwari died in the house of the appellant by hanging herself on 08.12.2008 at about 10.30 a.m. The question is whether soon before her death, she was subjected to cruelty in relation to dowry. Ex.P.1 was lodged by the father of the deceased. On that basis, Crime No.1087 of 2008 came to be registered. P.W.1 received information about the death of his daughter at around 12.00 noon on 08.12.2008. complaint came to be given only at 07.00 p.m. on the same day. A careful reading of Ex.P.1 does not indicate that the appellant made any dowry demand. Section 304(B) of I.P.C. will be attracted only if soon before the death, the wife is subjected to dowry related cruelty. In this case, a reading of Ex.P.1 would indicate that there was no such commission of dowry related cruelty on the deceased. It is seen that Bhuvaneshwari had undergone some major operation in her



abdomen. Some complications developed after the operation was performed. It was advised that she could not have any sexual intercourse. P.W.1, the father of the deceased would allege that on that basis, the appellant developed a suspicion regarding the character of his wife. But then, the statement given by the accused under Section 313 of Cr.P.C. would indicate that Bhuvaneshwari became rather depressed that she would not be in a position to beget a child and since her parents would persuade her to return to the matrimonial home, she chose to go to her uncle's house. In fact in Ex.P.1 also P.W.1 had also stated that on 27.11.2008 Bhuvaneshwari left the matrimonial home and went to her paternal uncle Patchi Rajan's house. Only on 07.12.2008, she was persuaded to return to the matrimonial house. The marriage between the parties had taken place on 09.07.2008. The suicide took place on 08.12.2008 at about 10.30 a.m. that is within five months. During this period on two occasions Bhuvaneshwari had left the matrimonial home. The prosecution has not chosen to examine the Doctor, who performed the operation on Bhuvaneshwari. Those aspects have been totally suppressed. The prosecution did not seize the medical records of the deceased. This probablies the defence of the accused that Bhuvaneshwari chose to end her life as she was being compelled by her parents to rejoin the husband. It is also relevant to note here that it was the appellant, who informed his sister-in-law about the suicide of Bhuvaneshwar.

9.I carefully went through the statement of the accused filed under Section 313 of Cr.P.C. It definitely inspires my confidence. It carries considerable credibility. It is in consonance with the sequence of events set out in Ex.P.1. It is quite possible that the deceased out of frustration and depression decided to end her life on account of her medical condition. To rule out these possibilities, the prosecution ought to have seized the medical records of the deceased and marked the same. Therefore, I am of the view that the benefit of doubt should go to the accused. The appellant is acquitted. Thes impugned judgment is set aside and the criminal appeal is allowed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Sessions Judge,
Mahila Court, Tiruchirapalli.

<https://hcservices.ecourts.gov.in/hcservices/>
2. The Deputy Superintendent of Police,
Lalgudi, Tiruchirapalli District.



3. The District Collector,
Tiruchirapalli District

4. The Director General Of Police,
Mylapore, Chennai

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section, (2 Copies),
Madurai Bench of Madras High court, Madurai

+1 CC to MR.N.ANANDA KUMAR, Advocate (SR-78319[F] dated
29/07/2019)

Crl.A. (MD) No.495 of 2010
26.07.2019

IAS

MK (16.09.2019) 4P 9C