



BAIL SLIP

The Appellants / Accused 1 to 3 namey, 1. Mumtaj Begam, aged 56, Female, W/o.Mohamed Kani, 2. Baritha Begam, aged 29, Female, W/o.Jaheer Ushen, 3. Parakkath Nisha, aged 38, Female, W/o.Abdul Rahman were directed to be released on bail as per the order of this court dated 2/3/2010 in MP(MD)No.1/2010, in Crl.A(MD)No.70/2010 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)Nos.70 of 2010

and

Crl.A.(MD)No.331 of 2019

In Crl.A.(MD)No.70 of 2010

1.Mumtaj Begam
2.Baritha Begam
3.Parakkath Nisha

... Appellants / A1 to A3

Vs

State represented by,
The Inspector of Police,
Arimalam Police Station,
Ponnamaravathy Taluk,
Pudukkottai District.

... Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records from the Lower Court and set aside the Judgment of the Lower Court passed by the Mahila Court, Pudukkottai, Pudukkottai District in S.C.No.58 of 2009, dated 26.02.2010 by allowing this appeal.

For Appellants

: Mr.M.Karunanithi
for Mr.K.Baalasundaram

For Respondent

: Mr.A.Robinson
Government Advocate (Crl.side)

In Crl.A.(MD)No.331 of 2019

Naina Mohammed

... Appellant

Vs

1.State represented by
The Inspector of Police,
Arimalam Police Station,
Pudukkottai District.



2.Mumtaj Begam
3.Faritha Begam
4.Parakath Nisha

... Respondents

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records from the Lower Court and enhance the sentenced passed by the Mahila Court, Pudukottai in S.C.No.58 of 2009, dated 26.02.2010 against the above accused 1 to 3/respondents 2 to 4 herein.

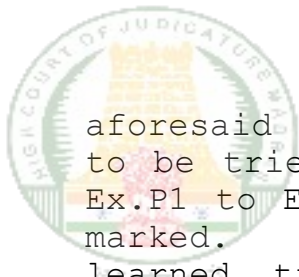
For Appellants : Mr.S.I.A.K.Bagadur Sha
For R1 : Mr.A.Robinson
Government Advocate (Crl.side)
For R3 to R4 : Mr.M.Karunanithi
for Mr.K.Baalasundharam

COMMON JUDGMENT

The appellants were convicted and sentenced by the learned Mahila Court, Pudukkottai, vide Judgment dated 26.02.2010 in S.C.No.58 of 2009 as follows:-

Accused	Penal Provisions	Punishment
Accused No.1 to 3	498 (A) IPC	To undergo rigorous imprisonment for one month and to pay Rs.1,000/- as fine, in default, to undergo three months simple imprisonment.
Accused No.1 to 3	304(B) IPC	To undergo rigorous imprisonment for seven years. Sentences to run concurrently.

2.The case of the prosecution is that Al's son Thiru.Mohammed Abdullah got married to Thilrasbanu on 11.09.2005 and that, a male child was born to them. While so, on account of harassment with regard to dowry, Thilrasbanu committed self immolation on 16.01.2009 and died. In this regard, P.W.1-father of the deceased lodged Ex.P1-Complaint, Arimalam Police Station, Pudukkottai. Ex.P8-FIR in Crime No.12 of 2009 was registered under Section 174 of Cr.P.C. Inquest was conducted and later, alteration report vide Ex.P10 was submitted by the Deputy Superintendent of Police, Ponnamaravathi Sub Division. Final report came to be filed against the appellants for the offences under Sections 498A and 304B of IPC before the Judicial Magistrate, Thirumayam. Cognizance of the offence was taken. The case was committed to the Sessions Court in P.R.C.No.3 of 2009. The case was made over to the Mahila Court, Pudukkottai in S.C.No.58 of 2009. Charges were framed against the three appellants for the



aforesaid offences. The appellants denied the charges and claimed to be tried. The prosecution examined P.W.1 to P.W.12 and marked Ex.P1 to Ex.P13. On the side of the accused, Ex.D1 to Ex.D3 were marked. M.O.1 to M.O9 were also marked by the prosecution. The learned trial Judge, by the impugned Judgment, convicted and sentenced the appellant as mentioned above. Questioning the same, this appeal came to be filed.

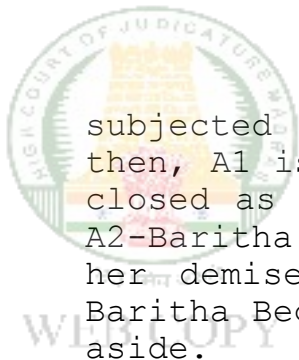
3.Heard the leaned counsel on either side.

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

5.Even during the pendency of the appeal, A1 passed away and therefore, the proceedings against her stands abated. This criminal appeal stands closed as far as A1 is concerned.

6.It is relevant to note that the husband of the deceased was not an accused. This was because for one year prior to the occurrence, he was employed abroad. The case was registered only against the mother-in-law and sisters-in-law of the deceased. At the very out set, it must be stated that the main thrust of Ex.P1 Complaint is only against the mother-in-law Mumtaj Begam and the sister-in-law Baritha Begum. There is absolutely nothing mentioned against A3-Parakkath Nisha. Of-course, in the evidence given before the Court, P.W.1 sought to rope in A3 also. But then, I am of the view that this is a clear case of improvement with an intention to implicate both the sisters-in-law. Therefore, I am of the view that the Court below clearly erred in convicting Parakkath Nisha-A3 guilty of the charges. The conviction and sentence imposed on A3 -Parakkath Nisha is set aside. The case against A1-Mumtaj Begam stands closed as abated, while the conviction and sentence imposed on A3-Parakkath Nisha is set aside. Now that leaves only an appeal of A2-Baritha Begam for consideration.

7.It is not in dispute that Baritha Begum got married in the year 1997. Her matrimonial home has been at Thiruvapoor from the very inception. Two children were born to her. The first one was in the year 1997. while the second one was in the year 2002. During the relevant time, the husband of Baritha Begum was running a tea shop in Thiruvapoor Village. While so, the deceased was living with A1 at Mirattunilai Village. The Thiruvapoor Village is situated at a distance of atleast 15 kilometers from the Mirattunilai Village. P.W.12-Investigating Officer had categorically deposed in his testimony that in his investigation, it was not revealed that sisters-in-law of the deceased visited Mirattunilai Village prior to the occurrence. The offence of Section 304(B) of IPC will be attracted only if it is established by the prosecution that soon before the occurrence, the deceased was subjected to cruelty. It is quite possible that the mother-in-law A1 had



subjected the deceased to cruelty due to which was she died. But then, A1 is no more and the proceedings against her had already been closed as abated. There is no material on record to indicate that A2-Baritha Begum subjected the deceased to any cruelty soon before her demise. Therefore, the conviction and sentence imposed on Baritha Begum for the offence under Section 304(B) of IPC stands set aside.

8.I carefully went through the testimony of P.W.1- the father of the deceased. A reading of the said testimony gives an impression that since the son-in-law could not be roped in as he was away on overseas employment, the other members of the family, namely, mother-in-law and two sisters-in-law should somehow be roped in. P.W.1 has implicated all the three appellants in an omni bus fashion. Investigation Officer-P.W.12 had stated that P.W.1 in his statement under Section 161 of Cr.P.C., has not given any dates or particulars as to when the dowry demand was made. I am satisfied that the deceased, who was a young and newly married wife, was having some serious difference of opinion with the mother-in-law and that led her to go to take the extreme step of committing suicide by self immolation. One must think that when the occurrence took place, the deceased was having a six month old child, no young mother would dream of taking away her own life and leaving the child helpless as an orphan. This Court wanted to satisfy its conscience as to what happened to the child. In fact, I directed the Police to produce the child before me. The child of the deceased namely Kalentharkani Raj appeared before me in person today. He is aged about 12 years. He is studying in 7th standard in the Government School, Mirattunilai. The child told me that it is Baritha Begam who is taking care of him. In fact, he would refer to Baritha Begam as his mother.

9. Therefore, taking note of all these aspects, I am of the view that the conviction and sentence imposed on A2-Baritha Begum even for the offence 498A of IPC cannot also be sustained. A2-Baritha Begum is acquitted of all the charges. Crl.A.(MD)No.70 of 2010 is allowed. The appellants A2 and A3 are acquitted. The fine amount, if any, paid by them shall be refunded forthwith. The bail bond, if any, executed by the appellants shall stand cancelled. Crl.A.(MD)No.331 of 2019 stands dismissed.

Sd/-

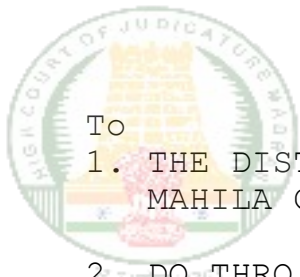
Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
MAHILA COURT, PUDUKOTTAI
2. DO THRO THE CHIEF JUDICIAL MAGISTRATE,
PUDUKOTTAI
3. THE JUDICIAL MAGISTRATE
THIRUMAYAM, PUDUKOTTAI DIST
4. THE INSPECTOR OF POLICE
ARIMALAM POLICE STATION,
PONNAMARAVATHY TALUK, PUDUKKOTTAI DISTRICT.
5. THE MAHILA COURT
PUDUKOTTAI
6. THE OFFICER INCHARGE,
SPECIAL PRISON FOR WOMEN, TRICHY
7. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
8. THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
THIRUMAYAM.

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-79905[F]

Crl.A(MD)Nos.70 of 2010
and

Crl.A.(MD)No.331 of 2019
05.08.2019

SMA/04/03/2020/5P/10C