



BAIL SLIP

1. K.Subramanian, S/o.Krishnan Asari, (A1) male, aged about 29/2013 and 2. Arumugathammal, W/o.Krishnan Asari, (A2) Female, aged about 50/2013 years are released on bail vide Court Order dated 02.12.2013 and 02.06.2014 made in MP(MD)Nos.1 of 2013 and 1 of 2014 in CRL A(MD)No.299 of 2013 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.299 of 2013

1.K.Subramanian
2.Arumugathammal

... Appellants/Accused No.1 & 2

Vs.

State represented by
The Inspector of Police,
Surandai Police Station,
Surandai,
Tirunelveli District.

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records relating to the Judgment dated 17.09.2013 made in S.C.No.393 of 2011 on the file of the Sessions Judge, Mahila Court, Tirunelveli, for convicting the accused under Section 498(A) of IPC and sentenced to undergo imprisonment for a period of three years rigorous imprisonment and to pay a fine of Rs.5,000/- in default further rigorous imprisonment for a period of six months, and also found guilty under Section 304(B) of IPC and sentenced to imprisonment for a period of seven years and a sum of Rs.5,000/- fine in default further rigorous imprisonment of one year and also found guilty under Section 4 of Dowry Prohibition Act and sentenced to imprisonment for a period of two years and a sum of Rs.5,000/- fine in default further rigorous imprisonment of four months and to set aside the conviction and sentence and allow the above criminal appeal.

For Appellants : Mr.V.Sasikumar

For Respondent : Mrs.S.Bharathi
Government Advocate (Crl.side)

**JUDGMENT**

The appellants were convicted and sentenced by the Sessions Judge, Mahila Court, Tirunelveli, vide Judgment dated 17.09.2013 as follows:-

Accused	Penal Provisions	Punishment
A1 and A2	498 (A)	To undergo three years rigorous imprisonment with fine of Rs.5,000/-, in default to undergo six month rigorous imprisonment.
	304 (B)	To undergo seven years rigorous imprisonment with fine of Rs.5,000/-, in default to under one year rigorous imprisonment.
	Section 4 of Dowry Prohibition Act	To undergo two years rigorous imprisonment with fine of Rs.5,000/-, in default, to undergo four months rigorous imprisonment.

2.The prosecution case is that the first appellant K.Subramanian got married to Alagu on 12.11.2010 as per the Hindu Rights and Customs. It was an arranged marriage. The appellants demanded additional dowry and the first appellant also threatened that he intended to contract a second marriage. On 13.03.2011, the first appellant is said to have physically pushed out his wife Alagu from the matrimonial home. Alagu returned to her parents's house and unable to bear the mental stress, committed self immolation on 15.03.2011 at about 4.45 p.m., In this regard, the father of the deceased namely Velu lodged Ex.P11-Complaint before the Surandai Police Station. There upon, Ex.P12-FIR in Crime No.131 of 2011 was registered under Section 304(B) of IPC against the appellants herein. The appellants are the husband and mother-in-law of the deceased. Investigation was taken up and after recording the statements of the witnesses and after completing the usual formalities, the final report was laid before the Judicial Magistrate, Sengottai, for the offences under Sections 3 and 4 of the Dowry Prohibition Act and 498(A), 406 and 304(B) of IPC. The case was committed to the Sessions Court in P.R.C.No.25 of 2011. It was made over to the Mahila Court, Tirunelveli for trial in S.C.No.393 of 2011. As many as five charges were framed against the appellants herein. The accused denied the charge and claimed to be tried. The prosecution examined 14 witnesses and marked Ex.P1 to Ex.P14. M.O.1 to M.O.3 were also marked. The learned trial Judge, by the impugned



Judgment, convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal came to be filed.

3.The learned counsel appearing for the appellants reiterated the contentions set out in the appeal memorandum and wanted this court to reverse the impugned Judgment and acquit the appellants.

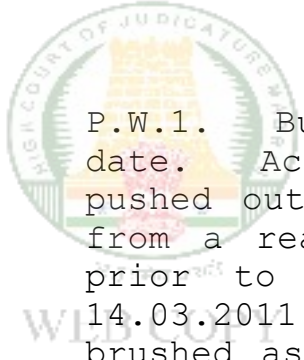
4.Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not call for interference.

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

6.The father of the deceased Velu who gave the original complaint, passed away before the commencement of the trial. Therefore, he could not be examined. The entire case of the prosecution rests on the testimony of P.W.1 to P.W.3. P.W.1 is the mother of the deceased. P.W.2 is the brother of the deceased. P.W.3 is the sister-in-law of the deceased that is the wife of P.W.2. All the three prosecution witnesses have broadly supported the prosecution case.

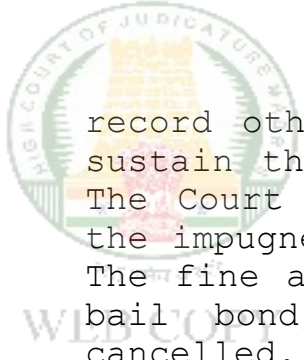
7.The learned counsel appearing for the appellant would submit that there are some material contradictions between the testimony of these witnesses. P.W.1 deposed that the first accused harassed her daughter and demanded payment of additional dowry to the tune of Rs.1,00,000/-. He had threatened that unless she brought the dowry amount, he would go for remarriage. It can be inferred from the testimony of P.W.1 that one day prior to the occurrence, the first accused had physically pushed out the deceased from the matrimonial home. According to P.W.1, Alagu contacted her over phone and informed her about her condition. She had stated that she is standing outside the house on the road. There upon, P.W.1 and her husband rushed and they enquired their daughter. Alagu is said to have narrated the entire sequence of events. According to P.W.1, Alagu wanted to lodge a police complaint. But then, P.W.1 is said to have prevailed upon her not to do so. They returned to their house at around 09.00 pm. On the next day, P.W.1 assured her daughter that she will call for Panchyat and take efforts for reconciliation. Thereafter, both P.W.1 as well as her husband left the house. During their absence, Alagu locked the house from inside and committed self immolation.

8. According to P.W.2, the brother of the deceased and son of P.W.1, his sister returned from the matrimonial home on 13.03.2016. P.W.2 's testimony partly corroborates the stand of



P.W.1. But then, there is a serious discrepancy regarding the date. According to P.W.2 as well as P.W.3, the deceased was pushed out from the matrimonial home on 13.03.2011. But then, from a reading of the testimony of P.W.1, it occurred one day prior to the occurrence which means it had taken place on 14.03.2011. These discrepancies cannot be casually ignored or brushed aside. This is because, the accused, in his examination under Section 313 of Cr.P.C., categorically stated that within 15 days from the date of marriage, Alagu left him and returned to her parents house. Even though the accused endeavoured to bring her back home through elders and well wishers, she refused to rejoin him. This was because, the first accused/husband, is a physically challenged person. In fact, the physical condition of the first accused is admitted by P.W.1 in her cross examination. According to accused, the deceased Alagu was very unhappy that she was given in marriage to a physically challenged individual and that is why, she did not want to live with A1. It is not in dispute that the deceased committed self immolation only in her parents' house. In other words, suicide did not take place in the matrimonial home. The matrimonial home is at Thenkasi. The appellant's house is at Surandai. According to the accused, from the second week of the date of marriage, the deceased was living away from him and at her parent's house. But according to P.W.1, her daughter stayed only at her matrimonial home and that she was driven out from the matrimonial home on 13.03.2011.

9. P.W.14 is the Investigating Officer. To a specific question posed in the cross examination, he admitted that the deceased Alagu was living with her parents atleast for one month prior to the occurrence. This answer given by the Investigating Officer is totally fatal to the entire prosecution case and one can conclude from this that the occurrence, projected by the prosecution as having taken place on 13.03.2011, never took place. I find the defence taken by the accused to be more probable. The deceased was aged about 29 years when she was given in marriage. This Court can take judicial note of the fact that in any conservative Hindu family, 29 is definitely a late age for marriage. Therefore, the parents of the girl must have obviously been under stress and had probably compelled Alagu to agree for the marriage. Even though A1-Subramanian was physically challenged, P.W.1, in the cross examination, claimed that her daughter was fair in colour and was also good looking. A girl who was fair in colour and good looking, obviously felt mentally distressed by the fact that she was forced into such a marriage. Therefore, I am of the view that the accused have clearly probalised their defence. It is also to be noted that the prosecution had not examined any independent witness. The Investigating Officer had not examined any neighbour from the area of the matrimonial home of the accused. There is absolutely no material on



record other than the interested testimony of P.W.1 to P.W.3 to sustain the prosecution case of marital cruelty or dowry demand. The Court below did not take note of these aspects. Therefore, the impugned Judgment is set aside. The appellants are acquitted. The fine amount, if any, paid shall be refunded forthwith. The bail bond, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. THE SESSIONS JUDGE, MAHILA COURT, TIRUNELVELI.
2. THE JUDICIAL MAGISTRATE, SENGOTTAI.
3. THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI.
4. THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
5. THE OFFICER IN-CHARGE,
SPECIAL PERSON FOR WOMENTS, TRICHY.
6. THE INSPECTOR OF POLICE
SURANDAI POLICE STATION, SURANDAI, TIRUNELVELI DIST,
7. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

copy to

The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.V. SASI KUMAR, Advocate (SR-82509[F] dated
20/08/2019)

Cr1.A(MD)No.299 of 2013
20.08.2019

ns (CO)

TR(13.05.2020)5P 11C