



Bail Slip

The Appellant/Accused No.I, viz., S.Saravanan, S/o.Selvaraj was released on bail (Accused not in jail) as per the order of this Court dated 09.02.2015 made in Crl.MP(MD) No.1/2015 in Crl A(MD)No.32 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.08.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.A.(MD)No.32 of 2015

S.Saravanan

: Appellant/A1

Vs.

State rep.by
The Inspector of Police,
All Women Police Station,
Pudukottai,
Thoothukudi.

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment made in S.C.No.52 of 2013, dated 28.01.2015 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi.

For Appellant : Mr.T.Antony Arul Raj

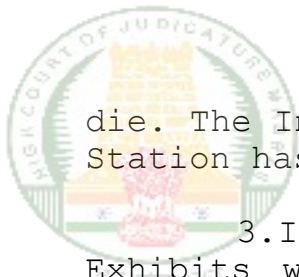
For Respondent : Mr.R.Anandha Raj

Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgment passed in S.C.No.52 of 2013, dated 28.01.2015 by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi.

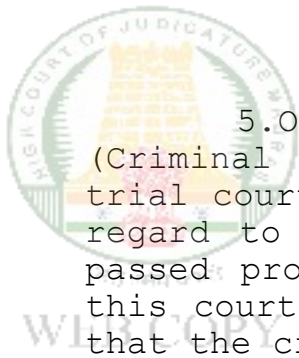
2.The case of the prosecution is that the marriage between the first accused and Balasuriya was celebrated on 31.08.2011 and at the time of marriage, 20 sovereigns of gold jewels were presented, besides a sum of Rs.50,000/- along with seervarisai and the first accused was carrying on Provisional Store business and after marriage, the first and second accused said that they did not like Balasuriya and demanded 5 sovereigns and that, if only she had brought 5 sovereigns, the first accused would live with her and this committed cruelty and harassment to Balasuriya and that on 25.11.2011, at about 5.30 am, the first accused abused Balasuriya and asked her to accompany him to her brother's house and forced her to sit in the two wheeler and as she refused, the first accused pushed her down and kicked her in the abdomen by uttering go and



die. The Inspector of Police attached to Pudukottai All Women Police Station has filed a final report examining the witnesses.

3. In the trial court, 8 witnesses were examined and 5 Exhibits were marked. When the accused were questioned about the incriminating circumstances, they denied the same. On the side of the accused, no witness was examined and two documents were marked. The trial court convicted the appellant/A1 for the offence under Section 498(A) IPC and sentenced him to undergo two years rigorous imprisonment with fine of Rs.3,000/-, in default to undergo simple imprisonment for three years. Aggrieved by the judgment passed by the trial court, the appellant/A1 is before this court.

4. The learned counsel appearing for the appellant/A1 submitted that the trial court erred in convicting the appellant under Section 498(A) IPC and the trial court failed to note that the prosecution did not prove his case beyond reasonable doubt against the accused for the charge of cruelty and that the prosecution witnesses have not supported the prosecution case and the trial court failed to consider the deposition of PW2, who is the mother of the de-facto complainant and she admitted that there was a problem to the de-facto complainant and taken to the hospital in this regard and also PW2 advised her daughter/de-facto complainant and this aspect did not taken into consideration by the trial court and the trial court failed to consider that the mother of the de-facto complainant admitted that there was no dispute between the de-facto complainant and the appellant and the de-facto complainant was living happily in the matrimonial home and the trial court failed to consider the plea of the appellant and the impugned criminal proceeding was initiated by the de-facto complainant with mala-fide intention and to cover up her inability in the matrimonial life and the trial court failed to consider that the basis ingredients of Section 498(A) IPC are wholly absent in the present case and the trial Judge failed to see that the case of the prosecution is that the de-facto complainant was harassed by the appellant and his mother by demanding dowry and the learned trial Judge correctly came to the conclusion that the prosecution failed to prove the demand of dowry and rightly acquitted the appellant for the offence under Section 4 of the Dowry Prohibition Act and after having directed acquittal from the charges relatable to Section 4 of the Dowry Prohibition Act, on the self-same evidence, the trial court ought not to have held the appellant guilty under Section 498(A) IPC and the trial Judge failed to see the fact that there is a clear contradiction between the deposition of PW1 and PW8, who is the Investigating Officer and in this case, the Investigating Officer/PW8 admitted that no witnesses were examined in the locality where the appellant and the de-facto complainant lived together. In view of the above circumstances, the judgment of the trial court has to be set aside and the appeal has to be allowed.



5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that trial court appreciated the evidence in a proper manner and having regard to the nature of the offence, convicted the appellant and passed proper sentence, which do not require any interference by this court and the accused is not entitled for acquittal and prays that the criminal appeal may be dismissed.

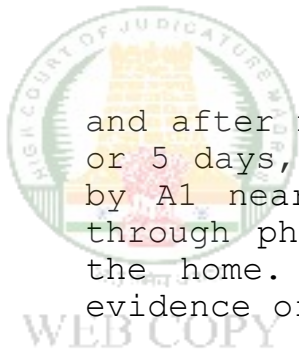
6. Heard both sides and perused the materials available on record.

7. The main contention raised on the side of the appellant/A1 is that there was no evidence for the charge of cruelty and the mother of the de-facto complainant admitted that there was no dispute between the de-facto complainant and the appellant and the de-facto complainant was living happily in the matrimonial home and from the deposition of PW2, it can be culled out that the entire case of the prosecution is a clear story, which was created by the de-facto complainant and that the impugned criminal proceeding was initiated by the de-facto complainant with mala fide intention and to cover up her inability in the matrimonial life and PW2, who is the mother of the de-facto complainant admitted that there was problem to the de-facto complainant and taken to the Hospital in this regard, she admitted her daughter, but the above fact was not taken into consideration by the trial court and the trial court came to the conclusion that the demand of dowry was not proved and hence, the offence under Section 498(A) IPC is also not made out and the de-facto complainant was never subjected to harassment by the appellant and hence, the offence under Section 498(A) IPC is illegal and prays that the appellant/A1 is entitled to acquittal.

8. PW1 is the complainant and she gave Ex.P1 complaint. PW1 in her complaint and evidence stated that she was married to A1 on 31.08.2011 and at the time of marriage, 20 sovereigns of gold jewels were presented besides a sum of Rs.50,000/- and the couple lived happily for 1-1/2 month and on 17.11.2011, the first accused said that he did not like her and demanded 5 sovereigns of jewels and sent her out of the matrimonial home by leaving her in her brother's house as she did not have parents and she returned back to her in-laws house along with her aunt.

9. It is also in her evidence that on 25.11.2011, her husband insisted her to go to her brother's house and as she refused, both the accused pulled her and harassed her to get in the bike and the first accused left her near the burial ground and he pushed her from the bike and assaulted her and later admitted her in the hospital where her complaint was recorded by the police.

10. PW2 is the Aunt of PW1. PW2 deposed that due to dispute between the appellant and PW1, PW1 was left in her brother's home



and after mediation, she was taken to matrimonial home, but after 4 or 5 days, PW1 was assaulted and ill-treated by A1 and she was left by A1 near the burial ground and after receiving the information through phone, she went to PW1's home where she was forced out of the home. Hence, the evidence of PW2 is corroborated with the evidence of PW1.

11.PW3 is an independent witness, who saw PW1 was lying near the burial ground. PW3 deposed that on 25.11.2011 when he was in his way to the field, he saw a person lying injuries near the burial ground and when he requested, PW1 stated that her husband harassed her. Hence, the evidence of PW3 is corroborated with the evidence of PW1.

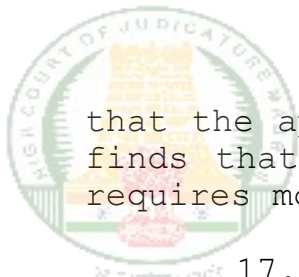
12.The Doctor, who gave treatment to PW1 was examined as PW5. PW5 deposed that on 25.12.2011 at about 11.45 am, PW1 came along with her brother for treatment and on clinically examining her, he found that she had immense pain on her abdomen and both the knees and there were no external injuries.

13.PW1 during her evidence stated that on 25.11.2011, her husband left her near the burial ground at about 8.00 am and when she again refused to leave A1, A1 pushed her from the bike and assaulted her abdomen and told her to go and die. Hence, the evidence of PW1 is corroborated with the evidence of Doctor (PW7).

14.PW1 categorically stated that her husband demanded dowry and due to it, he harassed her. Further, PW1 stated that A1 called her ugly which is itself is mental torture and this type of cruelty and harassment would attract Section 498(A) IPC and the evidence is available to the extent that he had given harassment to the wife by demanding 5 sovereigns. The facts lead to show that there was unlawful demand by the accused, the evidence being available to the extent that he physically assaulted her by causing bodily injuries and so the ingredients of the offence under Section 498(A) IPC are established. There is sufficient evidence to show that PW1 was subjected to cruelty and harassment by her husband/A1 in connection with demand of dowry.

15.Considering the entire evidence of the prosecution witnesses and documents, the prosecution has proved the guilt against A1 with respect to subjecting PW1 to cruelty beyond reasonable doubt. Hence, this court is of the considered view that the prosecution has proved the charge under Section 498(A) IPC against A1 alone.

16.This court, after going through the records, is of the considered view that the trial court has not committed any mistake or error in rendering a finding hold the appellant/A1 guilty of the offence, with which he stood charged. However, considering the fact



that the appellant/A1 is the breadwinner of the family, this court finds that the conviction and sentence imposed on the appellant/A1 requires modification.

17. In the result, this Criminal Appeal is **partly allowed**. The punishment imposed on the appellant/A1 for the offence under Section 498(A) IPC is reduced to **8 months RI**. The fine amount imposed by the trial court is confirmed. The period of sentence, if any already undergone by the accused is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Sessions Judge,
Fast Track Court,
Mahila Court,
Thoothukudi.
2. The Judicial Magistrate No.I,
Thoothukudi
3. -Do- thro the Chief Judicial Magistrate,
Thoothukudi
4. The Inspector of Police,
All Women Police Station,
Pudukottai,
Thoothukudi.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer, (2 copies)
Criminal Section/Records,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.T.ANTONY ARUL RAJ, Advocate (SR-79835[F] dated
05/08/2019)

Judgment made in
Crl.A.(MD)No.32 of 2015
05.08.2019

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MK (11.10.2019) 5P 9C

<https://hcservices.ecourts.gov.in/hcservices/>