

Bail Slip

The Petitioner/Accused viz Manoharan S/o. Pazhanimuthu be and hereby was directed to be released on bail as per order of this Court dated 24.04.2012 and made in M.P. 1/2012 in Crl.A. No. 280/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.280 of 2012

Manoharan ... Appellant

Vs.

State represented by
Deputy Superintendent of Police,
Rasipuram,
Mangalapuram Police Station,
Namakkal District.

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence dated 11.04.2012, passed by the Additional District and Sessions Judge, Fast Track Court, Namakkal, in S.C.No.31 of 2011.

For Appellant : Mr.K.Doraisamy,
Senior Counsel
for Mr.V.R.Appaswamee

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

J U D G M E N T

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence dated 11.04.2012, passed by the Additional District and Sessions Judge, Fast Track Court, Namakkal, in S.C.No.31 of 2011.

2.The prosecution story is as under :

2.1.The deceased Pavayi was the daughter of Periyasamy (P.W.1) and Saroja (P.W.2) and elder sister of Sadaiyan (P.W.3) and Murugan (P.W.4). They were residing in Singapuram Village in Salem District. Pavayi was a police constable.

2.2.The appellant hailed from Mangalapuram Village which is about 7 km from Singapuram Village. The appellant was running a grocery shop in Mangalapuram Village. The appellant's father had died and he (appellant) was taking care of his mother and younger brother by name Anbu.

2.3.The parents of Pavayi were courting for a suitable alliance for their daughter and found a match in the appellant. The marriage of Pavayi with the appellant was solemnized on 18.01.2010 and at the time of marriage, the family of Pavayi voluntarily gave 20 sovereigns of gold to their daughter and did not give any dowry to the family of the appellant.

2.4.At the time of marriage, Pavayi was posted as Constable in Ulundurpet, Villupuram District, which is about 140 km away from Salem District. After marriage, Pavayi shifted to her matrimonial home in Mangalapuram Village, from where, she was going for duty. Pavayi worked for about two months after marriage in Ulundurpet and thereafter, she was transferred to Chennai.

2.5.On 18.07.2010, Pavayi committed suicide by hanging in her matrimonial home when the appellant was away in his shop. The appellant had requested a Television Mechanic to come home for repair and on coming to know that the Mechanic has come home, the appellant went to his house and found the door locked from inside. He rang the calling bell but to no avail. Therefore, he, along with some neighbours, staved in through the main door at 12.45 p.m. and to their shock, found Pavayi hanging down the ceiling fan. The body was lowered and intimation was sent to the parents of Pavayi.

2.6.On the written complaint (Ex.P1) given by Periyasamy (P.W.1), Nithya (P.W.10), Sub-Inspector of Police, registered a case in Crime No.310 of 2010 on 18.07.2010 at 18.00 hours under Section 174(3) Cr.P.C and prepared the printed F.I.R. (Ex.P5) which reached the Executive Magistrate at 06.30 a.m. on 19.07.2010, and the jurisdictional Magistrate at 04.30 p.m. on the same day.

3.Investigation of the case was taken over by Tamilselvan (P.W.14), Deputy Superintendent of Police, who went to the place of occurrence and prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P10), which reached the jurisdictional Magistrate on 23.07.2010.

4.Since the death had occurred within seven years of marriage, Ramasamy (P.W.12), Revenue Divisional Officer, conducted inquest over the body of the deceased and recorded the statements of the parents and brothers of Pavayi as well those of the appellant. Thereafter, he submitted his report to the Investigating Officer. Ramasamy (P.W.12), in his evidence, as well in the inquest report, has stated that the death of Pavayi was not on account of dowry harassment. The police altered the

case from one under Section 174(3) Cr.P.C. to Section 306 IPC vide alteration report (Ex.P11) dated 19.07.2010.

5.Dr.Gunalan (P.W.11) performed autopsy on the body of the deceased and sent the samples of visceral organs to the Tamil Nadu Forensic Sciences Laboratory for examination. After obtaining the Viscera Report (Ex.P7) and Hyoid Bone Report (Ex.P6), Dr.Gunalan (P.W.11) opined that the death of Pavayi was on account of Asphyxia due to hanging, vide postmortem certificate (Ex.P8).

6.It may be pertinent to state here that no external injuries were found on the body of the deceased, except the ligature mark around the neck. The Viscera Report (Ex.P7) also did not disclose the presence of any poison in the visceral organs.

7.After examining witnesses and completing the investigation, Tamilselvan (P.W.14), filed a final report in P.R.C.No.32 of 2013 before the Judicial Magistrate, Rasipuram, for the offences under Sections 498-A and 306 IPC.

8.On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.31 of 2011 and was made over to the Additional District and Sessions Court (Fast Track Court), Namakkal, for trial.

9.The trial Court framed charges for the offences under Sections 498-A and 306 IPC against the appellant. When questioned, the appellant pleaded 'not guilty'.

10.To prove the case, the prosecution examined 14 witnesses, marked Exs.P1 to P11 and one material object.

11.When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he gave a detailed explanation stating out his defence. It is essential to state here that the appellant asserted that his wife had left a suicide note, the original of which was given to the police, but the same was buried. However, he submitted a photocopy of the suicide note along with his statement under Section 313 Cr.P.C. The appellant examined George, an Handwriting Expert, who had retired from the Tamil Nadu Forensic Science Department, as D.W.1, and marked Ex.D1 in order to prove that the suicide note was indeed left by Pavayi. The appellant also marked Exs.D2 to D5.

12.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 11.04.2012, in S.C.No.31 of 2011, convicted and sentenced the appellant as under :

Provision under which convicted	Sentence
Section 498-A IPC	Two years rigorous imprisonment and also fine of Rs.2000/- in default to undergo rigorous imprisonment for six months
Section 306 IPC	Five years rigorous imprisonment and also fine of Rs.5000/- in default to undergo rigorous imprisonment for one year

13.Challenging the aforesaid conviction and sentences, the appellant is before this Court.

14.Heard Mr.K.Doraisamy, learned Senior Counsel representing Mr.V.R.Appaswamee, learned counsel on record for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent.

15.The prosecution has proved the following facts beyond cavil :

- i. the relationship between the parties;
- ii.Pavayi was working as a Police Constable in Ulundurpet at the time of marriage and two months thereafter, was transferred to Chennai;
- iii.Pavayi committed suicide by hanging in her matrimonial home on 18.07.2010.

16.The point for consideration is, whether the appellant had committed act(s) of cruelty and abetted the suicide of Pavayi.

17.The evidence on record clearly shows that, at the time of marriage, there was no demand of dowry by the appellant and that is why, no charge under Section 304-B IPC was framed. This Court is conscious of the fact that the presumption under Section 113-A of the Evidence Act can be evoked in a case of this nature.

18.Periyasamy (P.W.1), the father of Pavayi, and Saroja (P.W.2), the mother of Pavayi, in their evidence, have clearly stated that they had voluntarily given 20 sovereigns of gold to their daughter at the time of marriage. Periyasamy (P.W.1), in his evidence, has stated as under :

"The marriage was solemnized on 18.01.2010 in Mariamman Temple. My daughter's ATM Card was with my son Sadaiyan (P.W.3). Within two months of marriage, the ATM Card was taken away from him by my daughter at the behest of the accused. After marriage, my daughter was serving in Ulundurpet and thereafter, she was transferred to Chennai. Whenever she gets time, she would go and be with the accused. My daughter told me that the accused told her that he has a debt of around Rs.4 lakhs, for which, he needs her full salary. My two sons also know about this. A week before her death, my younger son Murugan (P.W.4) went to the house of the accused and he was disrespected. 20 days prior to her death, my daughter had availed leave and had gone to stay with the accused. On the 1st of Tamil month 'Aadi', the accused dropped my daughter in our house and left. At that time, my daughter told me that the accused is harassing her for money".

This, in short, is the evidence of P.W.1. On similar lines are the evidence of P.W.2, P.W.3 and P.W.4.

19. However, when these witnesses were examined during inquest by Ramasamy (P.W.12), Revenue Divisional Officer, they did not say that the appellant was demanding money, much less Rs.4 lakhs. On the contrary, P.Ws.1 and 2 have categorically stated that as under :

"திருமணமாகி ஆறு மாத காலத்தில் மாப்பிள்ளை எங்களிடம் பணமோ, நகையோ ஏதும் கேட்கவில்லை,"

("during six months of marriage, our son-in-law (accused) did not demand any money or jewel from us.")

A statement made by a witness to the Magistrate during inquest does not suffer the vice of Section 162 Cr.P.C. and can be used to corroborate or contradict his testimony in the Court. In the cross-examination, Periyasamy (P.W.1) was confronted with the statement, as required under Section 145 of the Evidence Act, but he denied having stated so to the Revenue Divisional Officer during inquest. However, in the cross-examination of Ramasamy (P.W.12), Revenue Divisional Officer, the defence has confronted him with the statement and has proved that P.Ws.1 and 2 had indeed stated so to him. It must be remembered that, after marriage, Pavayi lived only for a short period with the appellant, since she was posted in Ulundurpet and thereafter, transferred to Chennai, which is even farther away from Salem District. Therefore, this Court is unable to infer that the

appellant had demanded Rs.4 lakhs from Pavayi during the short period of their matrimonial life.

20.Sadaiyan (P.W.3), in his evidence, has stated that, even while she was serving in the Police Department, Pavayi was attending computer classes to enhance her skills. P.Ws.1 to 4 have all stated that, even after marriage, the ATM Card of Pavayi was with Sadaiyan (P.W.3), with which, he was drawing money from her salary account to pay various bills including the fees for the computer classes.

21.Learned Government Advocate (Crl. Side) took this Court through the evidence of Periyasamy (P.W.1) and submitted that the appellant had accepted that he would permit Pavayi to support the studies of her two younger brothers with her salary, but two months after marriage, he went back on his words and demanded the return of the ATM Card from Sadaiyan (P.W.3).

22.Sadaiyan (P.W.3), in his evidence, has stated that, after marriage, he retained the ATM Card of his sister and was drawing money using it for expenses and was paying the fees for the computer classes from that. However, it is the contention of the appellant that he had never demanded the return of the ATM Card, but it was his wife's decision to get back the ATM Card, since she was transferred from Ulundurpet to Chennai; after she was transferred, she was using the ATM Card, because, her salary was not credited for two months into her account.

23.The learned Government Advocate (Crl. Side) submitted that the appellant insisted that Pavayi should resign her job and this would amount to cruelty within the meaning of Section 498-A IPC. Unfortunately, except the evidence of Sadaiyan (P.W.3), no one else had stated that the appellant wanted Pavayi to resign her job. Sadaiyan (P.W.3) stated that the appellant told his sister to get back the ATM Card from him and if the ATM Card is not returned, she may resign. This, at the most, means that there was a dispute between the husband and wife with regard to the usage of the ATM Card by Sadaiyan (P.W.3). In that context, the appellant had stated that, if the ATM Card is not returned, she should resign. Couples do not agree on all matters and there are bound to be differences of opinions on several issues. Neither in the complaint (Ex.P1) nor in the statements made during inquest, the witnesses have stated that physical violence was let loose by the appellant on Pavayi. Even in the evidence of P.Ws.1 to 3, there is absolutely no reference to physical violence, however, Murugan (P.W.4) has made a stray statement that, on 11.07.2010, when he went to the house of his sister, his sister told him that the appellant had assaulted her demanding Rs.4 lakhs. This Court has rejected the alleged demand of Rs.4 lakhs and has given reasons for the rejection above. Hence, the stray statement of Murugan (P.W.4)

that his sister told him that the appellant had assaulted her for not bringing Rs.4 lakhs, does not cut ice with this Court. It may be borne in mind that Pavayi was a Police woman and she would not have brooked any physical violence. This Court is unable to agree with the submission of the learned Government Advocate (Crl. Side) that the demand for the return of the ATM Card is an act of cruelty within the meaning of Section 498-A IPC. At the risk of repetition, the ATM Card was got back within two months of marriage when Pavayi was transferred from Ulundurpet to Chennai, whereas, the suicide occurred four months thereafter.

24.Now, coming to the suicide note (Ex.D4), Mr.K.Doraisamy, learned Senior Counsel appearing for the appellant took this Court through the evidence of Sarkarai @ Periyasamy (P.W.6), through whom, the defence has marked the photocopy of the suicide note as Ex.D4. To the credit of the defence, it must be stated that the suicide note was confronted by them to P.Ws.1 to 4 and they were not able to mark it, as these witnesses disputed it. Only Sarkarai @ Periyasamy (P.W.6), in the cross-examination, admitted that the suicide note (Ex.D4) was found in the room where Pavayi was found hanging and handed over the original to the police. Sarkarai @ Periyasamy (P.W.6) was examined by the prosecution to prove that, on the day of the incident, he, along with the appellant, broke open the main door of the house, gained entry and found the body of Pavayi hanging. In the cross-examination by the defence, he admitted that the suicide note handwritten by Pavayi was found in the room and the village elders took a photocopy and handed over the original to the police. The defence marked the photocopy of the suicide note as Ex.D4 subject to the objection by the prosecution.

25.In Ex.D4, a photocopy of a handwritten suicide note written in Tamil and signed, Pavayi has stated that she is unable to live away from her husband and that is why, she is committing suicide. It is further stated that her brothers Sadaiyan (P.W.3) and Murugan (P.W.4) and her parents should not accuse her husband (appellant) for her suicide. It is also stated that,

"if you have any doubt as to who has written this note, you may obtain the leave letter which I have given to the Police Station and compare it".

The defence has obtained a copy of the leave letter (Ex.D2) dated 02.07.2010 addressed by Pavayi to the Sub-Inspector of Police, Mangalapuram Police Station.

26.Manickam, Sub-Inspector of Police, Mangalapuram Police Station, was examined by the prosecution as P.W.13 to prove the fact that, Pavayi was a Police Constable (Police Department - Police No.23); she was posted in Chennai; she came on short leave to Mangalapuram Village; she fell sick there; when a

police officer falls sick on leave, he/she should report to the nearest Police Station, obtain a passport and submit a leave application which will be forwarded to the concerned unit; accordingly, Pavayi appeared before him and gave a leave letter seeking leave on medical grounds along with a medical certificate which was forwarded to her unit. In the cross-examination of this witness, the defence marked the photocopy of the leave letter as Ex.D2.

27.The defence also had in their possession, an assignment notebook (Ex.D3) that was maintained by Pavayi, wherein, she has written the various drills and other exercises that were taught to her in class. In the cross-examination of Periyasamy (P.W.1), he has stated that he cannot properly identify his daughter's writing and signature and the competent person was his eldest son Sadaiyan (P.W.3). In the cross-examination of Sadaiyan (P.W.3), the defence confronted him with the photocopy of the leave letter (Ex.D2) and also the assignment notebook (Ex.D3), which Sadaiyan (P.W.3) identified as the writings and signature of his sister. Thus, the defence has established the admitted handwriting and signature of Pavayi by marking Exs.D2 and D3. However, when Sadaiyan (P.W.3) was confronted with the photocopy of the suicide note (Ex.D4), he repudiated it. Therefore, the defence sent the disputed suicide note (Ex.D4) along with the admitted writings and signature, viz., Exs.D2 and D3, to George (D.W.1) for comparison and report.

28.George (D.W.1), in his evidence, has stated that he was working in the Tamil Nadu Forensic Science Department as a Handwriting Expert for 22 years and had examined around 2000 documents in his career. He has further stated that he took Voluntary Retirement and he is a freelance consultant. He compared the writings and signature in Exs.D2 and D3 with that in the suicide note (Ex.D4) and has opined that all the documents have been authored by the same person. He has also given cogent reasons for arriving at this conclusion in his report (Ex.D5). Strangely, the trial Court has rejected his evidence on the ground that he had used a photocopy for comparison and that the request for comparison had not gone through the Court. The opinion of an expert is relevant under Section 45 of the Evidence Act and law does not mandate that such an opinion should be obtained only through the process of Court, especially in a case of this nature, when the prosecution had buried the suicide note.

29.The learned Government Advocate (Crl. Side) contended that the suicide note (Ex.D4) could have been manufactured by the appellant party subsequently. To refute this contention, the learned counsel for the appellant brought to the notice of this Court that, even in the bail application of the appellant, the existence of the suicide note was pleaded. He also produced a newspaper report about the suicide of Pavayi, wherein, there

is a reference to the existence of a suicide note left by her. No doubt, this Court cannot place reliance on newspaper reports, however, Periyasamy (P.W.1) has admitted in the cross-examination that he heard that his daughter had left a suicide note. Of course, the Investigating Officer has completely denied this in the cross-examination. This Court has no reason to disbelieve the evidence of Sarkarai @ Periyasamy (P.W.6) about the discovery of the suicide note in the room where Pavayi was found hanging, taking of a photocopy of it by the village elders and the handing over of the same to the police, especially in the light of the fact that the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P10) reached the Magistrate only on 23.07.2010. Even if we keep aside the suicide note and invoke the presumption under Section 113-A of the Evidence Act, the materials on record are indeed insufficient to hold that the appellant had perpetrated such cruelty so as to push Pavayi to end her life.

30. In fine, this Criminal Appeal deserves to be allowed and is accordingly allowed and the judgment of conviction and sentence passed by the Court below is set aside. The appellant is acquitted of the charges framed against him.

Fine amount, if any paid by the appellant, shall be refunded to him. Bail bond, if any executed by the appellant, shall stand discharged.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court,
Namakkal.

2. The Deputy Superintendent of Police,
Rasipuram,
Mangalapuram Police Station,
Namakkal District.

3. The Public Prosecutor,
High Court, Madras.

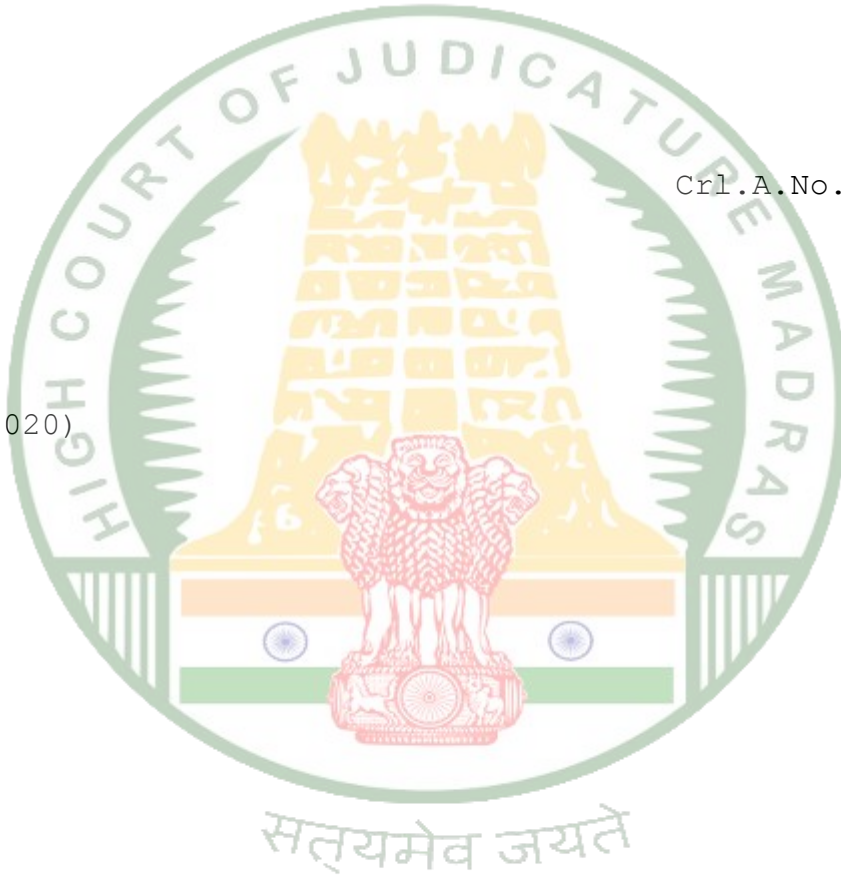
4.The Deputy Registrar |
(Criminal Section), | with a direction to send back the
High Court, Madras. | original records to the trial Court

5.The Judicial Magistrate, Rasipuram
6.Do Thro The Chief Judicial Magistrate, Namakkal
7.The Superintendent, Central Prison, Salem
8.The Superintendent, Central Prior, Coimbatore

+2 Ccs to Mr.V.R.Appaswamee, Advocate sr 364.

Crl.A.No.280 of 2012

PA (CO)
SP (24/02/2020)



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