

**Bail Slip**

The Petitioners/Accused viz., 1) Saravanan, S/o.Selvakumar, 2) Selvakumar S/o.Kannan, 3) Indirani W/o.Selvakumar were directed to be released on bail as per order of this court dated 13/12/2012 in CrI.MP No.1/2012 in Cr.A.853 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.A.No.853 of 2012

1. Saravanan

2. Selvakumar

3. Indirani

...

Appellants/Accused

Vs.

The Assistant Commissioner of Police,  
High Court Range,  
Chennai - 600 104. ...

Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment and order dated 19.11.2012 passed in S.C.No.297 of 2008 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

For Appellants : Mr.G.Ravikumar

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

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 19.11.2012 passed in S.C.No.297 of 2008 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

2. The aggregated facts of the case gleaned from the evidence on record are as under:

2.1 The deceased Radha was the daughter of Rasathi (PW1) and Rajendran (PW2), and sister of Rajesh (PW3) and Raja (PW5). She had studied upto XII standard and thereafter had discontinued her studies. Their family is from Ernavur village in Ennore.

2.2 Saravanan (A1) is the son of Selvakumar (A2) and Indirani (A3), and elder brother of Logeshwari (A4). The family of the accused is also from Ernavur village in Ennore.

2.3 Saravanan (A1) was working as a daily wager under a contractor. When Radha joined typewriting class and at that time, she got acquainted with Saravanan (A1). They fell in love with each other and had premarital sex, due to which, Radha conceived. When this matter came to light, both the families agreed for their marriage and the marriage was performed on 07.11.2003 at a temple in Thiruvotriyur. After marriage, Radha delivered a girl baby sometime in the first quarter of 2004. It is alleged that Saravanan (A1) and his family members were demanding a sum of Rs.1,00,000/- and a motorcycle as dowry from the family of Radha. Since Radha's father was unable to meet the demand, it is alleged that Radha was subjected to cruelty by the accused. In the mean time, Radha conceived for the second time and delivered a baby girl sometime in the year 2007.

2.4 Radha was employed in the screen printing press of Iyyasamy (PW10). Three months prior to her death on 27.12.2007, Radha went to her natal home with her two children and was living there. On 26.12.2007, Radha consumed poison while she was in her office. She informed this to her husband (A1) over phone and so, he rushed there and took her to Stanley Medical College and Hospital, where, Radha was examined by Dr.Prabakaran (PW14) at 3.00 p.m. on 26.12.2007.

2.5 Dr.Prabakaran (PW14), in his evidence as well in the copy of the accident register (Ex-P8), has stated that Radha was admitted as in-patient. Saravanan (A1) sent information to the family of Radha; they rushed to the hospital. Radha died in the hospital on 27.12.2007 at 7.45 p.m.

2.6 On the complaint (Ex-P1) given by Rasathi (PW1), mother of Radha, the police registered a case in Crime No.745 of 2007 on 27.12.2007 at 22.00 hours for the offence under Section 304-B IPC, against Saravanan (A1) and his family members.

2.7 Since the death of Radha was within seven years of marriage, Bal Singh (PW13), Executive Magistrate, conducted inquest over the body of Radha and recorded the statements (Exs-P2, P3 & D3 ) of Rasathi (PW1), Rajendran (PW2) and Saravanan (A1), respectively. Bal Singh (PW13), in his evidence as well in the inquest report (Ex-P6), has opined that the death of Radha was due to dowry harassment.

2.8 Dr.Sathyamoorthy (PW16) performed autopsy on the body of Radha and sent the samples of visceral organs to the Tamil Nadu Forensic Sciences Laboratory, for examination.

After obtaining the report (Ex-P10), Dr.Sathyamoorthy (PW16) has given the following opinion:

"Final Opinion:

The deceased would appear to have died of poisoning - the nature of poisoning could not be detected."

2.9 The appellants were arrested by the police on 28.12.2007. Narayanamoorthy (PW17), Sub-Inspector of Police, went to the place of occurrence and prepared the observation mahazar (Ex-P4) and rough sketch (Ex-P12) in the presence of witnesses Samidurai (PW4) and Gunasekaran (not examined).

2.10 After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.40 of 2008 before the VII Metropolitan Magistrate, George Town, Chennai, for the offences under Sections 498-A and 304-B IPC against Saravanan (A1), Selvakumar (A2), Indirani (A3) and Logeshwari (A4).

2.11 On appearance of the accused, 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.297 of 2008 and was made over to the Sessions Court (Mahalir Neethimandram), Chennai, for trial.

2.12 The trial Court framed charges for the offences under Sections 498-A and 304-B IPC, against Saravanan (A1), Selvakumar (A2), Indirani (A3) and Logeshwari (A4). When questioned, the accused pleaded "not guilty".

2.13 To prove the case, the prosecution examined seventeen witnesses and marked thirteen exhibits.

2.14 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the allegations. However Saravanan (A1) examined himself as DW1 and marked three exhibits.

2.15 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 19.11.2012 in S.C.No.297 of 2008, acquitted all the accused of the charge under Section 304-B IPC, and acquitted Logeshwari (A4) of the charge under Section 498-A IPC as well, but, convicted and sentenced Saravanan (A1), Selvakumar (A2) and Indirani (A3) as under:

| Provision under which convicted | Sentence                                                                                                          |
|---------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Section 498-A IPC               | Three years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo three months simple imprisonment. |

Saravanan (A1), Selvakumar (A2) and Indirani (A3) are before this Court.

3. Heard Mr.G.Ravikumar, learned counsel for the accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. The prosecution has proved the following facts beyond a peradventure:

- (a) the inter se relationship of the parties;
- (b) Saravanan (A1) and Radha were in love with each other and she has conceived even before marriage;
- (c) marriage was solemnized by both the families on 07.11.2003;
- (d) after marriage, in the first quarter of 2004, Radha delivered her first girl child;
- (e) Saravanan (A1) and Radha were living away from both their families, in Paruthipudhur village in Arakkonam.
- (f) three months prior to 27.12.2007, Radha along with her children, went to her natal home and stayed with her parents;
- (g) Radha was employed in the printing press of Iyyasamy (PW10);
- (h) Radha consumed poison on 26.12.2007 in her work place; and
- (i) Radha died on 27.12.2007 in Stanley Medical College and Hospital.

5. As alluded to in paragraph no.2.15, the trial Court has acquitted all the accused of the offence under Section 304-B IPC, against which, the State has not chosen to file any appeal. Therefore, it has to be seen whether the evidence on record is sufficient to sustain the conviction of the accused 1 to 3 of the offence under Section 498-A IPC.

6. It is seen that except the family members of Radha viz., Rasathi (PW1), Rajendran (PW2), Rajesh (PW3) and Raja (PW5), all the other independent witnesses viz., Kavitha (PW7), Kumar (PW8), Vijayalakshmi (PW11) and Subramani (PW12), did not support the prosecution case.

7. Rasathi (PW1), in her evidence, has stated that after marriage, the couple lived for a few days in her house and thereafter, they were living in Paruthipudhur village in Arakkonam. This clearly shows that the couple was not living in joint family with Selvakumar (A2), Indirani (A3) and Logeshwari (A4).

8. Rasathi (PW1), Rajendran (PW2), Rajesh (PW3) and Raja (PW5) have stated that after marriage, the accused were demanding Rs.1,00,000/- and a motorcycle as dowry and were subjecting Radha to cruelty.

9. Saravanan (A1) has been taking a consistent stand right from the beginning when he was questioned by Bal Singh (PW13), Executive Magistrate, during inquest, that his matrimonial life with Radha was fine, but, Radha's mother (PW1) and his mother (A3) were at loggerheads. Only on account of this enmity, Saravanan (A1) and Radha decided to live away from Ernavur and take residence in Paruthipudhur in Arakkonam.

10. In the cross-examination of Rasathi (PW1), she admitted that the couple took up a house separately and were living there. It may be borne in mind that the marriage between Saravanan (A1) and Radha was a love marriage and after the first child was born, Radha conceived for the second time and delivered a baby in the year 2007. Rasathi (PW1) further admitted that after marriage, there were quarrels between her and the parents of Saravanan (A1) viz., Selvakumar (A2) and Indirani (A3).

11. Saravanan (A1), in his evidence, has stated that on account of this quarrel, a police complaint was given by the family members of Radha in Ernavur Police Station and the police called Selvakumar (A2) and Indirani (A3) for enquiry and one policeman even assaulted Indirani (A3). This has been admitted by Rasathi (PW1) in the cross-examination, but, she explained it away by saying that the police assaulted Indirani (A3), because, she quarrelled with the police.

12. Be that as it may, the fact remains that there were frequent quarrels between Rasathi (PW1) and Indirani (A3), pursuant to which, a police complaint was given and Indirani (A3) was assaulted by the police during enquiry. This incident was responsible for both the families getting estranged from each other.

13. Saravanan (A1), in his statement (Ex-D3) to the Executive Magistrate (PW13) as well in his evidence, has stated that Rasathi (PW1) was bent upon separating Radha from him, because, she (PW1) was not able to see eye to eye with his mother (A3). He has further stated that Rasathi (PW1) refused to send Radha to him even after the first delivery and therefore, Radha had to give a complaint to the police on 26.10.2004, a copy of which, has been marked as Ex-D2.

14. In the complaint (Ex-D2), Radha has stated that her mother (PW1) is not allowing her to join her husband (A1), because of her quarrel with Indirani (A3), her mother-in-law, and has requested the police for help to rejoin her husband. This complaint has been confronted to the prosecution witnesses.

15. In the cross-examination of Raja (PW5), he has admitted that the signature in the complaint (Ex-D2) is that of his sister Radha and therefore, the signature was marked as Ex-D1 and the main complaint was marked as Ex-D2 in the chief-examination of Saravanan (A1).

16. The Public Prosecutor, who cross-examined Saravanan (A1) was not able to make any serious dent in his testimony. The statement (Ex-D3) of Saravanan (A1) that was given to Bal Singh (PW13), Executive Magistrate, is a previous statement, which can be used for corroborating his testimony under Section 157 of the Evidence Act, because, it is not hit by the bar under Section 162 Cr.P.C. as it has not been given to a police officer, but to the Executive Magistrate.

17. On an analysis of the evidence on record, this Court is able to infer that Radha was stuck between her love for her husband (A1) and the unreasonableness of her mother (PW1). Saravanan (A1) has explained that Radha had gone to her natal home, because, electricity was disconnected in the house, in which, they were living and the house was infested with insects. He has further stated that when he had gone along with his family members to the house of Radha to bring her back, he was assaulted by the brothers of Radha.

18. In view of the foregoing discussion, this Court is of the opinion that the evidence on record is insufficient to sustain the conviction of the appellants under Section 498-A IPC.

19. In fine, this criminal appeal is allowed by setting aside the judgment and order dated 19.11.2012 passed in S.C.No.297 of 2008 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

Ex consequenti, Saravanan (A1), Selvakumar (A2) and Indirani (A3) are acquitted of the charge under Section 498-A IPC. The bail bond executed by accused 1 to 3 shall stand cancelled. Fine amount, if any, paid by the accused shall be refunded.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

nsd

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

To

1. The Sessions Judge,  
(Mahalir Neethimandram),  
Chennai.

2. Assistant Commissioner of Police,  
High Court Range,  
Chennai - 600 104.

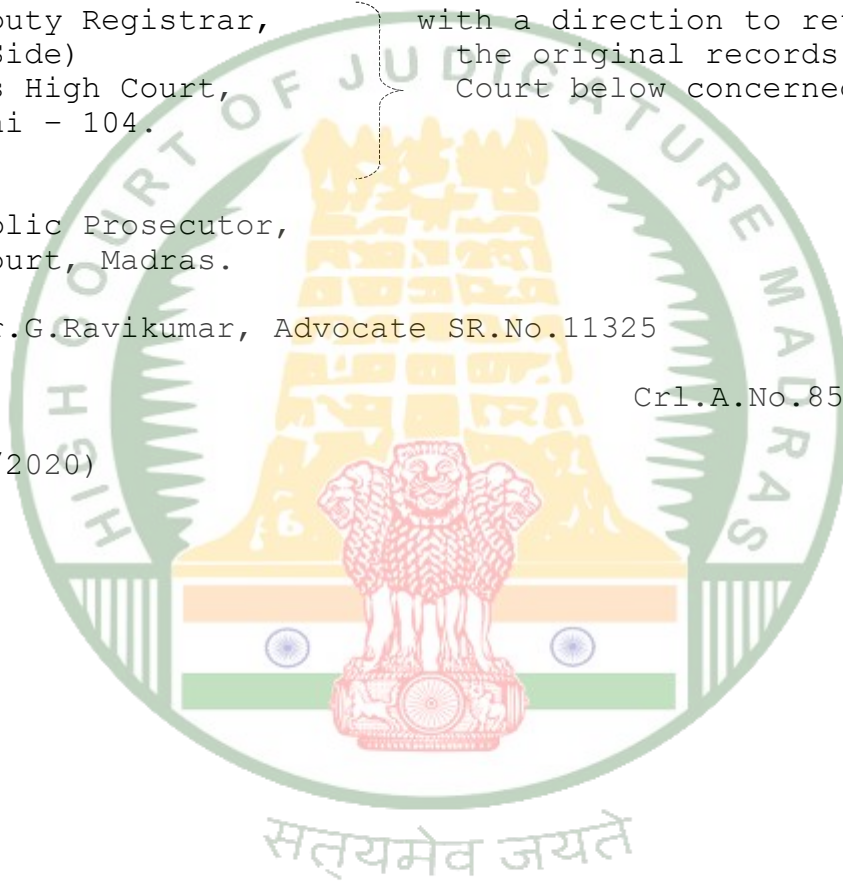
3. The Deputy Registrar,  
(Crl.Side) with a direction to return  
the original records to the  
Madras High Court, Court below concerned  
Chennai - 104.

4. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.G.Ravikumar, Advocate SR.No.11325

Crl.A.No.853 of 2012

RR(CO)  
GMY(19/03/2020)



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