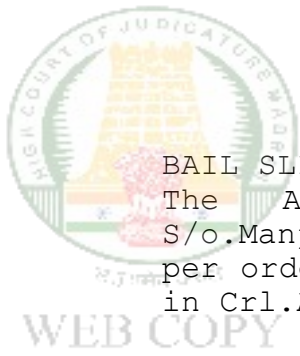




BAIL SLIP

The Appellant in Crl.A.No.625 of 2013 Viz; Suresh S/o.Manjamuthu, aged 32 was directed to be released on Bail as per order of this Court dated 24.09.2013 made in MP.No.1 of 2013 in Crl.A.No.625 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 06.03.2020
PRONOUNCED ON : 13.03.2020
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
Crl.A.No.625 of 2013

Suresh ... Appellant

Vs.

State by
Deputy Superintendent of Police,
Tittagudi Sub Divison
Crime No.517/2011
On the file of Veppur Police Station ... Respondent

Prayer: Criminal Appeal filed under Section 374 Cr.P.C. to call for the records pertaining to the judgment rendered by the Hon'ble Sessions Judge, Mahila Court, Cuddalore in S.C.No.251 of 2012 dated 27.08.2013 and set aside the same.

For Appellant : Mr.A.G.Rajan

For Respondent : Mr.R.Ravichandran
Government Advocate (criminal side)

J U D G M E N T

The appellant/A1 as well as his parents, namely, Manjamuthu and Selvambal (A2 and A3) had been charged by the respondent police under Sections 498-A and 306 I.P.C. The trial Court by judgment dated 27.08.2013 acquitted the parents of the appellant of the offences put forth against them and also acquitted the appellant of the offence put forth against him under Section 306 I.P.C, however, convicted him for the offence put forth against him under Section 498-A I.P.C. and sentenced him to undergo rigorous imprisonment for two years and also pay a fine for Rs.5,000/- (Rupees Five Thousand Only) in default to undergo rigorous imprisonment for three months and impugning the abovesaid conviction and sentence, the appeal has been preferred by the appellant.



2. Briefly stated, according to the prosecution case, the deceased Marimuthu got married to the appellant on 15.09.2008 and during marriage, the deceased parents presented 6 sovereigns of gold to the appellant and 20 sovereigns of gold to the deceased and offered Rs.2,00,000/- (Rupees Two Lakhs Only) towards marriage seer and the deceased and the appellant had been living together happily for two months and thereafter, the appellant went to Dubai and returned back after two and half years and thereafter also they were living together and meanwhile when the deceased was living with her in laws, she had been directed by her in laws to fetch additional 10 sovereigns of gold from her parents and the same had also been stressed by the appellant on his return from Dubai and accordingly, it is put forth that the appellant had been torturing her for 10 sovereigns of gold and though the deceased parents had assured that they would put 10 sovereigns of gold after the birth of a child to the deceased, however, the appellant and his parents had been torturing her to bring the same immediately and if she fails to bring the same, she has to die and thereby according to the prosecution, the appellant and his parents subjected her to cruelty and harassment and induced her to commit suicide and thereby committed offences put forth against them.

3. The law in this matter has been set in motion on the basis of the complaint launched by PW1 to the respondent police which has been marked as Ex.P1. Based on Ex.P1, the case had been registered under Section 174 Cr.P.C. On a perusal of Ex.P1, it is noted that PW1 had only averred in Ex.P1 that on hearing that his daughter Marimuthu had consumed poison and been admitted at Thuzhudhur hospital and thereafter taken her to Labbai Gudikadu hospital and thereafter, to I.S. nursing home at Trichy and thereafter, the deceased was brought home and she had sustained death en route on 14.10.2011 at about 11 A.M. and accordingly prayed for necessary action. Thus, it is found that on a perusal of Ex.P1 complaint, nothing has been averred in the same as regards the alleged cruelty, harassment and ill-treatment said to have been caused by the appellant and his parents directing the deceased to bring 10 sovereigns of gold from her parents as sought to be projected by the prosecution. Ex.P1 is conspicuously silent on any ill-treatment alleged to have been caused by the appellant and his parents, particularly, causing cruelty on her with a view to secure 10 sovereigns of gold from her by way of dowry. The deceased having sustained unnatural death, it is found that the matter was referred to the RDO for conducting inquest and enquiry and the RDO examined as PW5 has conducted inquest and the enquiry and the report given by him has been marked as Ex.P3. On a perusal of Ex.P3, it is found that the RDO after examining the parents of the deceased and her paternal uncle as well as the accused and the panchayat members concluded that there has been no dowry demand on



the part of the accused and his parents from the deceased and also opined that the deceased would have died on account of the pain she has been suffering during the period of menstruation and further noted that there is possibility of ill-treatment caused by her in laws and directed the police to further investigate into the matter. Thus from the inquest report given by PW5, it is evident that there has been no dowry demand on the part of the appellant and his parents from the deceased as sought to be projected by the prosecution. It is also further noted that there is a possibility of the deceased committing suicide by consuming poison unable to bear the pain she had been experiencing during the period of menstruation. However, it is also noted that there is possibility of cruelty caused by her in laws and in specific, in the inquest report it is not mentioned that any cruelty done by the appellant against the deceased by demanding 10 sovereigns of gold as sought to be projected by the prosecution. Therefore, it is found that the inquest report projected by PW5 does not support the prosecution case and on the other hand, would only buttress the defence version that there has been no demand of dowry on their part from the deceased as put forth by the prosecution.

4. As above pointed out, the appellant and his parents had not been charged by the respondent police under Section 304-B I.P.C. Further, the appellant and his parents had been acquitted of the offence punishable under section 306 I.P.C. Therefore, it is evident that the appellant and his parents has not abetted the deceased to commit suicide as put forth by the prosecution. Though Ex-P3 inquest report has suggested that the in laws of the deceased would have committed cruelty on her, the trial Court deemed it fit to acquit the in laws, namely, the parents of the appellant of the offences under Section 498-A I.P.C. Also, challenging the abovesaid determination of the trial Court, the prosecution has not preferred any appeal. Therefore, the only charge that remains is whether the appellant had caused cruelty and ill-treatment to the deceased as contemplated under Section 498-A I.P.C.

5. From the evidence of PWs 1 to 3 in toto, it is found that after the marriage, the deceased and the appellant had been living peacefully for two months and thereafter, the appellant went to Dubai and returned two and half years thereafter. Even after his return from Dubai, it is found that the appellant and the deceased led a peaceful life. Only subsequent thereto, according to the prosecution, the appellant had also joined with his parents and insisted the deceased to bring 10 sovereigns of gold and thereby causing her ill-treatment, harassment and cruelty.



6. During the inquest conducted by PW5, it is found that the panchayatars as well as the appellant and his parents had informed that the deceased used to experience severe pain during the period of menstruation and on account of the same, unable to bear the said torture, she had taken poison and the same had also been reflected in the report sent by him marked as Ex.P3. Now, according to PWs 1 to 3, the appellant and his parents had been directing the deceased to bring 10 sovereigns of gold and on that score causing her ill-treatment and harassment and they have stated that they had received a phone call from the deceased on 08.10.2011 complaining of ear ache and on hearing the same, according to them, they immediately rushed to the deceased house and on noting that the deceased was not available and they have been informed that the deceased had been admitted at the hospital, Thuzhudhur. Accordingly, it is their case that they immediately rushed to the Thuzhudhur hospital and the deceased had informed them that the appellant and her in laws had been torturing her to bring 10 sovereigns of gold and unable to bear the torture, she had consumed poison. Thereafter, according to PWs 1 to 3, they had taken the deceased to the hospital at Labbai Gudikadu hospital and after providing treatment for her for two three days at private hospital, thereafter shifted her to I.S. Hospital, Trichy on 12.10.2011 and provided treatment to her for two days and thereafter got her discharged with a view to admit her at Puducherry hospital and had taken the deceased to Puducherry hospital, en route she had died and following the same, the complaint had been lodged with the police which has been marked as Ex.P1.

7. As above pointed out, if really the abovesaid version offered by PWs 1 to 3 has any semblance of truth and further, if really the deceased at Thuzhudhur hospital had apprised PWs 1 to 3 about the torture inflicted upon her by the appellant and his parents, naturally while lodging the complaint Ex.P1, PW1 would have narrated the abovesaid reasons being the cause for the death of the deceased. However, as above pointed out, PW1 did not spell out any cause for the death of the deceased, particularly, she having been put to any torture by the appellant and his parents by demanding additional gold as put forth by the prosecution.

8. Further, if really the deceased had consumed poison on account of the torture inflicted upon her by the appellant and his parents by demanding additional gold, naturally, she having been admitted at Thuzhudhur hospital for the same, at the time of admission at Thuzhudhur hospital she would have informed the doctor as regards the cause for consuming poison. However, it is found that for the reason best known to the prosecution, the prosecution has not endeavoured to examine the Doctor who had treated the deceased at Thuzhudhur hospital or endeavoured to collect the medical records of the deceased pertaining to



Thuzhudhur hospital and though the IO examined as PW11 during the course of cross examination has admitted that she had come to know that the deceased got admitted in the Thuzhudhur hospital in the first instance consuming poison, however, would state that she cannot state reason for not examining the Doctor attached to Thuzhudhur hospital and according to the IO, the deceased had informed the hospital at Thuzhudhur that she had consumed poison only on account of stomach ache and accordingly, when a suggestion had been put to her by the accused that she had not endeavoured to examine the Doctor at Thuzhudhur hospital as the same would affect the prosecution, though the IO has denied the suggestion, however, considering the fact that the deceased at the first instance got admitted at Thuzhudhur hospital, naturally, she would have assigned reasons for committing suicide by consuming poison at Thuzhudhur hospital and accordingly, if the prosecution had endeavoured to examine the Doctor at Thuzhudhur hospital and ascertained the cause for consuming poison by the deceased, truth would have been divulged in one way or the other. For the reasons best known to the prosecution, they have not endeavoured to examine the Doctor at Thuzhudhur hospital or collect the medical records at Thuzhudhur hospital qua the treatment taken at Thuzhudhur hospital. The abovesaid facts would go to expose that inasmuch as the abovesaid aspect of the case would go against the prosecution, it is evident that the prosecution had not endeavoured to place reliable evidence with reference to the same despite the accessibility of the same by the prosecution. Therefore, a serious doubt arises as to why the deceased had consumed poison, whether only due to the torture inflicted upon her by the appellant and his parents as projected by the prosecution or on account of the stomach ache she has been suffering during the period of menstruation. Therefore the best evidence has not been projected by the prosecution by examining the doctor who treated the deceased at Thuzhudhur hospital and produced the medical records of the deceased for the treatment undertaken by her at Thuzhudhur hospital.

9. Furthermore, if really, the deceased had apprised PWs 1 to 3 that she had consumed poison only due to the torture inflicted upon her by the appellant and his parents as deposed by them, naturally, on hearing the deceased, PWs 1 to 3 would have endeavoured to immediately lodge a complaint against the appellant and his parents to the police one way or the other, particularly, alleging about the torture committed by them to the deceased by demanding additional gold. On the other hand, it is found that no complaint had been lodged by them with reference to the cause for consuming poison by the deceased on 08.10.2011 as informed to them by the deceased.



10. According to PWs 1 to 3, thereafter they had taken the deceased to Labbai Gudikadu hospital for treatment and the accident register issued by the hospital at Labbai Gudikadu hospital has been marked as Ex.P8, wherein, it has been stated that the deceased was conscious and talking strongly and she had informed that she had consumed poison because of her family problem. Therefore, on a perusal of Ex.P8, it is found that the deceased has not apprised to the medical officer at Labbai Gudikadu hospital that she had consumed poison due to the torture inflicted upon her by the appellant and his parents. Therefore, the accident register Ex.P8 only reveals that she had consumed poison because of her family problem. As to what is her family problem, there is no explanation on the part of the prosecution and therefore, from Ex.P8, it cannot be construed that the deceased had consumed poison because of the cruelty inflicted upon her by the appellant and his parents.

11. Further, according to PWs 1 to 3, after providing treatment at Labbai Gudikadu hospital, thereafter they shifted the deceased to I.S. hospital Trichy and the accident register issued by I.S. hospital Trichy has been marked as Ex.P4. In Ex.P4, there is no reference as to the reasons for the consumption of poison by the deceased. Be that as it may, according to PWs 1 to 3, after treatment at I.S. Hospital Trichy for two days, thereafter they had decided to shift the deceased to Puducherry hospital and accordingly, on 14.10.2011, they had proceeded to discharge the deceased and when she was brought home, she had sustained death en route and thereafter Ex.P1 complaint has been launched by PW1.

12. On an appreciation of the narration of the facts with reference to the factum of the deceased having got admitted in various hospitals from 08.10.2011 till her death on 14.10.2011, when it is found that none of the medical records point out that the deceased had complained of torture inflicted upon her by the appellant and his parents and on that score, she had consumed poison and even after her demise, Ex.P1 complaint lodged by PW1 also does not reflect that the deceased died due to the torture inflicted upon her by the appellant and his parents by demanding additional gold, in such view of the matter, as rightly contended by the accused counsel, the trial Court had erred in coming to the conclusion that the appellant had committed cruelty on the deceased as contemplated under Section 498-A I.P.C and further erred in sentencing him as determined by it.

13. With reference to the abovesaid determination, the trial Court has only relied upon the evidence of PW1 that the appellant had demanded additional 10 sovereigns of gold directly from him in the presence of his daughter and on that basis proceeded to hold that the appellant had inflicted cruelty upon



WEB GATES

the deceased. However when with reference to the abovesaid aspect of the matter, when the deceased herself has not complained anything about the harassment done by her husband, namely by the appellant and when according to PWs 1 to 3, the appellant had been to Dubai within two months after marriage and returned home two and half years thereafter and in the interregnum, it is only the appellant's parents who had been torturing the deceased by directing her to fetch 10 sovereigns of gold from her parents and when the inquest report of PW5 would also go to disclose that there is a possibility of cruelty inflicted upon the deceased by her in laws and when the inquest report does not spell out any cruelty committed by the appellant as such on the deceased and when according to the prosecution case itself the deceased and the appellant had been living peacefully even after his return from Dubai, to say that the appellant had joined hands with his parents and demanding the deceased to fetch 10 sovereigns of gold from her parents subsequently, as such, cannot be believed when there is no reliable and convincing evidence adduced on the side of the prosecution with reference to the same and when the prosecution has failed to establish that there has been any dowry demand on the part of the appellant and his parents and in such view of the mater, when there is a possibility of the deceased having consumed poison unable to bear the pain she had been experiencing during the period of menstruation and the deceased had also not spoken anything about the ill-treatment caused by appellant and his parents at the time of admission in various hospitals as above pointed out, and furthermore, when it is seen from Exs.D1 to D3, particularly Ex.D1 having come into existence on the date of complaint Ex.P1, when PW1 is found to be the signatory of Exs.D1 and D2 and when Ex.D1 clearly recites that the deceased had died only on account of stomach ache and God's Will and does not reflect that the deceased died due to the cruelty caused on her by the appellant and his parents as such and when the demand of dowry on the part of the appellant and his parents had been ruled out and the appellant and his parents are also not found to be responsible for abetting the deceased to commit suicide and the appellant's parents are also not found to have been caused cruelty to the deceased by the trial Court, to say that the appellant had solely caused cruelty to the deceased, in the absence of any reliable and trustworthy evidence on the side of the prosecution pointing to the same, in my considered opinion, the trial Court has erred in holding that the appellant had committed offence punishable under Section 498-A I.P.C and sentencing him thereof.

14. In the light of the above discussions, the prosecution having failed to discharge the presumption of innocence on the part of the appellant by adducing acceptable and reliable evidence and the prosecution having failed to bring home that the deceased had died due to the cruelty inflicted



upon her by the appellant and his parents and also failed to establish that the appellant in particular has caused any ill-treatment and harassment on her by demanding dowry, in such view of the matter, the conviction and sentence imposed on the appellant by the trial Court is liable to be set aside.

15. In conclusion, the judgment dated 27.08.2013, passed in S.C.No.251 of 2012, on the file of the Sessions Judge, Mahila Court, Cuddalore convicting the appellant under Section 498-A I.P.C. and sentencing him to undergo rigorous imprisonment for two years and also pay a fine of Rs.5,000/- (Rupees Five Thousand only) and in default to undergo rigorous imprisonment for three months are set aside and the appellant is acquitted of the aforesaid charge framed against him under Section 498-A I.P.C. and accordingly, the criminal appeal is allowed. The bail bond executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To:

1. The Sessions Judge, Mahila Court, Cuddalore.

2. The Deputy Superintendent of Police,
Tittagudi Sub Division,
Crime No.517/2011,
On the file of Veppur Police Station.

3. The Public Prosecutor,
High Court, Madras.

4. The Judicial Magistrate No.I
Vridhachalam, Cuddalore District

5. The Chief Judicial Magistrate,
Cuddalore

6. The Principal District Judge Cuddalore

+1 cc to Mr.A.G.Rajan Advocate sr22504

CrI.A.No.625 of 2013

pm(co)
aa13/07/2020