

Bail Slip

Please state whether the accused 1. Kanakkan @ Prakash
2. Maila 3. Ariyan CC NO.33 of 2010 on the file of the Mahila
Neethi Mandram (FTMC) Dharmapuri on your file were released on
bail as orderd in Criminal MP No.1/2013 Cr.Appeal NO.702/2013
dated 18/10/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2020

PRONOUNCED ON : 02.06.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

CRL A.No.702 of 2013
and
CRL. MP. No.12068 of 2016

1. Kanakkan @ Prakash
2. Maila
3. Ariyan

...Appellants/Accused 1 to 3
Vs.

State Rep by
Inspector of Police
Indur Police Station
Dharmapuri District

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the
Criminal Procedure Code to ~~set~~ aside the judgment and order
passed on the appellants/accused by Mahalir Neethi Mandram
(FTMC) Dharmapuri by his judgment and order dated 10.10.2013,
made in S.C.No.33 of 2010 convicting the appellants under
Section 498-A IPC and sentenced to undergo 3 years Rigorous
Imprisonment and to acquit the appellants.

For Petitioners : Mr.C.Prabhakaran

For Respondent : Mr. R. Ravichandran
Government Advocate (Crl. Side)

JUDGMENT

The appellants/accused have been convicted by the Mahalir
Neethi Mandram (FTMC) Dharmapuri for the offence punishable
under 498-A IPC and sentenced to undergo Rigorous imprisonment
for 3 years and to pay a fine of Rs.3,000/-each, in default,
to undergo Rigorous Imprisonment for 6 months. Impugning the
same, this Criminal Appeal has been preferred by the accused.

2. Final report has been laid against the accused by the prosecution putting forth the case that the first accused is the husband of the deceased

Vijayalakshmi and the accused 2 and 3 are the parents of the first accused and after the marriage between the first accused and the deceased Vijayalakshmi, till her demise, the accused had been insisting the deceased to bring a sum of Rs.1,00,000/- as dowry and, on that score, continuously inflicting cruelty and harassment on her and thereby caused her mental agony and stress and unable to bear the torture committed by the accused, the deceased on 01.12.2008 at about 2.30 p.m doused kerosene on her body and set fire to herself and on account of the burn injuries sustained, she having died, thus it is stated that the accused had committed the offence punishable under Section 498-A and 304-B IPC and under Section 4 of the Dowry Prohibition Act.

3. The Criminal law has been set in motion based on the complaint lodged by Chinnappan, the father of the victim, examined as P.W.1, and the complaint lodged by him has been marked as Ex.P1. On the basis of the complaint, a case under Section 174 Cr.P.C had been registered. Following the same, it is found that on the requisition sent by the Inspector of Police, the RDO, examined as P.W.13, went to the occurrence spot and conducted the inquest upon the deceased body and prepared the Inquest Report, marked as Ex.P8 and concluded his enquiry by holding that the deceased had died due to dowry demand.

4. The Investigation Officer, based on the complaint, took up the investigation in the matter and prepared the observation mahazar and rough sketch marked as Exs.P2 and P9 and examined various witnesses and on receipt of the report of the RDO, altered the sections to 498-A , 304(B) IPC and Section 4 of Dowry Prohibition Act and the alteration report has been marked as Ex.P10 and arrested the accused persons and after examining the Medical Officer, who had conducted the Autopsy on the body of the deceased and after concluding the investigation laid the final report against the accused as aforestated.

5. To sustain the prosecution case, P.Ws.1 to 14 were examined and Exs. P1 to P10 were marked and M.Os.1 and 2 were marked. On conclusion of the prosecution evidence, the accused were examined under Section 313 of Cr.P.C. qua the incriminating evidence tendered against them by the prosecution witnesses and they had denied the same and according the accused, they had not committed the offences put forth against them by the prosecution and that they had been falsely implicated in the matter.

6. The trial court, on an appreciation of the materials placed on record, determined that the prosecution has failed to prove the charges levelled against the accused persons under Section 304-B IPC and Section 4 of Dowry Prohibition Act

and accordingly acquitted them of the abovesaid charges, however, proceeded to convict and sentence them under Section 498-A IPC as aforesaid. Challenging the same, the present Criminal Appeal has been preferred.

7. Considering the materials placed on record, it is found that the entire prosecution case proceeds on the premise that the victim girl had been subjected to torture and cruelty by the accused by directing her to fetch a dowry amount of Rs.1,00,000/- and thereby put her to mental agony and stress and unable to bear the torture and harassment committed by them, the victim girl set fire to herself by dousing kerosene and died thereby. However, considering the position that the trial court has acquitted the accused of the charges leveled against them of the offences under Section 304-B IPC and Section 4 of the Dowry Prohibition Act, in such view of the matter, the question of the accused persons demanding dowry from the victim girl is ruled out in toto. The prosecution has not preferred any challenge against the acquittal of the accused persons of the offences punishable under Section 304-B IPC and Section 4 of the Dowry Prohibition Act. When the case projected by the prosecution is that the accused persons had committed cruelty and harassment on the deceased only by demanding dowry, however, when the question of demand of dowry on the part of the accused having been disbelieved by the trial court and also the trial court having disbelieved that the deceased had died due to dowry demand, in such view of the matter, as rightly contended by the counsel for the accused, the prosecution should sustain that the accused had indeed caused any cruelty and harassment on the deceased and thereby caused her mental stress and agony as put forth by them. On a perusal of the evidence of P.W.1, the father of the victim as well as P.W.2, the mother of the victim, it is found that originally the marriage of the victim was arranged with one Chinnasamy. At that stage of the matter, it is projected that the accused had kidnapped the deceased and thereafter, the marriage had been solemnized between the first accused and the deceased and it is put forth by P.Ws. 1 and 2 that the parents of Chinnasamy made a panchayat with reference to the same and according to P.Ws.1 and 2, they paid Rs.40,000/- as compensation to Chinnasamy and his parents and further according to P.Ws.1 and 2, they gifted 10 sovereigns of jewels to the deceased at the time of marriage with the first accused. Further according to P.Ws.1 and 2, two months after the marriage, the accused had started demanding payment of Rs.1,00,000/- and they had refused to pay the same and their daughter used to come to their house often on that score and it is put forth by P.Ws.1 and 2 that panchayat had been convened with reference to the same and in the panchayat the accused has decided to take back the deceased and consequently their daughter went to the accused home and further it is put forth that later the deceased having been again sent back to their home, the complaint had been lodged at Pennagaram Police station alleging that the accused had committed cruelty on the deceased and at the intervention of the police, the accused

had agreed to live peacefully with the deceased and accordingly took back the deceased to their home. However, 3 days thereafter, they learnt that the deceased had committed suicide by setting herself ablaze and hence the complaint had been lodged.

8. Now according to the accused, the deceased was only inclined to marry Chinnasamy with whom originally the marriage had been fixed and accordingly, not endeavoured to continue the marital life with the first accused and on that score she had immolated herself and there has been no demand of dowry on the part of the accused from the deceased and her parents as sought to be projected by the prosecution.

9. It is found that the accused and P.Ws.1 and 2 are closely related to each other. In fact A2 is the sister of P.W.1, therefore, it is found that the deceased is the maternal uncle's daughter of A1. The marriage of the deceased having been fixed with one Chinnasamy, however, subsequently it is noted that the marriage had been celebrated only between the first accused and the deceased, according to the accused, the deceased was inclined to marry only Chinnasamy and the deceased was forced to marry A1 by her parents. In this connection, from the evidence of P.W.2, the mother of the deceased, it is found that the deceased was having inclination only to marry Chinnasamy, however, according to the prosecution, as deposed by P.Ws.1 and 2, after the marriage had been agreed between Chinnasamy and the deceased, on the accused kidnapping the deceased, the marriage between A1 and the deceased had been subsequently celebrated, however, the accused had denied the same. With reference to the abovesaid case of the prosecution, the panchayat had been convened by Chinnasamy's parents and the parents of the deceased had offered them Rs.40,000/- as compensation. With reference to the abovesaid case projected by the prosecution, the witnesses examined on their side as P.Ws. 3,4,5 and 6 had completely turned hostile and despite cross examination, nothing has been culled out from them in support of the prosecution case.

10. In the light of the abovesaid factors, when there is no material to hold that the marriage between the deceased and A1 had been celebrated following the alleged kidnapping of the deceased by the accused persons and on the other hand, when P.Ws.1 and 2 have admitted that the deceased marriage was originally fixed with Chinnasamy and when the alleged kidnapping of the deceased by the accused had not been established by the prosecution, it is found that on account of the love which the deceased had with Chinnasamy, the marriage had been arranged to be fixed with Chinnasamy, however, subsequently, it is found that the marriage had been celebrated only between the first accused and the deceased. In the light of the abovesaid factors, the claim of P.Ws.1 and 2 that they had paid Rs.40,000/- as compensation to Chinnasamy's parents on account of the breakup of the marriage between the deceased and Chinnasamy, as such, cannot be

believed and accepted. Further, as rightly contended by the counsel for the accused, if really the accused persons had kidnapped the deceased after the marriage of the deceased had been fixed with Chinnasamy, the parents of the deceased would have lodged a complaint against the accused persons, however, it has been admitted by P.Ws.1 and 2 that they had not preferred any complaint against the accused for kidnapping their daughter. As regards the presentation of 10 sovereigns of gold jewels, it is found that the same had been offered by the parents of the deceased on their own accord.

11. With reference to the case of the prosecution as put forth by P.Ws.1 and 2, on the accused insisting the deceased to bring a sum of Rs.1,00,000/- as dowry, the panchayat had been convened and in the panchayat, the accused had agreed to take back the deceased to their home. To substantiate the abovesaid case of the prosecution, absolutely there is no proof whatsoever and as above pointed out, eventually the witnesses examined as P.Ws.3 to 6 had turned hostile.

12. The further case of the prosecution is that inasmuch as the accused had again left the deceased in her parent's home, the deceased had preferred a complaint at Pennagaram Police station and at the intervention of the police, the accused again took the deceased back to their home. However, even with reference to the said case, there is no material whatsoever on the part of the prosecution and further, P.W.1 examined on behalf of the prosecution side has also not endeavored to produce necessary documents pertaining to Pennagaram police station on the alleged complaint lodged by the deceased. Hence the case that the complaint for cruelty had already been lodged against the accused at Pennagaram Police station falls to the ground. If really any such complaint has been lodged, the prosecution would have endeavoured to place the materials pointing to the same.

13. It is thus found that the prosecution had developed the story as if there had been subjugation of cruelty and harassment on the part of the accused against the deceased by directing her to fetch Rs.1,00,000/- as dowry, however, as above pointed out, when the demand of dowry on the part of the accused has been disbelieved by the trial court and the accused had been acquitted of the said charge of dowry demand in toto and when the deceased is also found to have not died due to demand of dowry by the trial court, in such view of the matter, the prosecution should establish that the accused persons had indeed caused cruelty and harassment on the deceased and thereby subjected her to mental stress and agony. The charge laid against the accused does not recite that the accused had caused any physical injury upon the deceased by demanding dowry amount. Further the postmortem certificate of the deceased marked as Ex.P3 discloses that no external injuries are found on the body of the deceased. Therefore, it is evident that the accused had not caused any physical injury

upon the deceased. Therefore, whether any mental stress and agony had been caused to the deceased by the accused persons has to be seen.

14. Though the RDO report projected in the matter proceeds that the dowry demand has been put forth by the accused persons, however, the RDO examined as P.W.14, during the course of cross examination has admitted that no dowry demand has been projected in the complaint as well as in the FIR and the complaint has not been lodged against the third accused and further admitted that no complaint had been lodged against the accused for kidnapping the deceased girl and also admitted that prior to the marriage of the deceased with the first accused, the marriage of the deceased had been fixed with another person, accordingly, when the criminal law had been set in motion based on the complaint lodged by P.W.1 and when considering the complaint lodged by him marked as Ex.P1, absolutely nothing has been mentioned therein as regards the demand of dowry on the part of the accused and on the other hand, the complaint only recites that the deceased used to pick up quarrel often after the marriage and come to the house and they used to pacify her and leave her in her husband's house and furthermore, when the complaint had also not been laid against A3 in particular, in such view of the matter, when P.Ws.1 and 2 have also developed the theory of demand of dowry of Rs.1,00,000/- on the part of the accused subsequently after the lodgment of the complaint however their case that with reference to the same, the panchayat had been convened and the accused had agreed to take back the deceased etc., having not been substantiated and the witnesses examined with reference to the same, having turned hostile, in such view of the matter, it is found that the marital life between the deceased and the first accused has not been smooth and cordial right from the inception.

15. In the light of the abovesaid factors, it is seen that considering the available materials on records inasmuch as the deceased was in love with Chinnasamy and accordingly their marriage having been fixed at the first instance, however, finally the marriage had been celebrated only between the deceased and the first accused, it is found that the deceased had not been happy about her marriage and accordingly, picked up quarrel often and without staying at her inlaws house came back to her parents house, however, though P.Ws.1 and 2 had endeavored to pacify her and left her at inlaws house, it is seen that the deceased had not chosen to continue the marital life with the first accused one way or the other and finally committed suicide by setting herself on fire. Only after the said incident, it is found that the complaint had been chosen to be lodged by P.W.1, the father of the deceased. Accordingly, it is found that at the first instance, no demand of dowry by the accused has been put forth by P.W.1 and though the demand of dowry had been put forth during the course of evidence by P.Ws. 1 and 2, however, with

reference to the said demand, there is no reliable proof on the part of the prosecution, as above pointed out the panchayatars having turned hostile and the deceased is also found to have been leaving the matrimonial home one way or the other and returning back to her husband's house subsequently, all put together, only lead to the conclusion that the deceased was not happily leading the matrimonial life with the first accused on account of her love affair with Chinnasamy and accordingly unable to continue her marital life, had chosen to commit suicide by setting herself on fire. Considering the date of marriage of the deceased and A1 on 11.04.2008 and the date of death of the deceased on 01.12.2008, within a short period of time, accordingly, it is noted, as contended by the counsel for the accused, the deceased unable to break and forget her love affair with Chinnasamy and continue the marital life with the first accused, had chosen to end her life and only after the same, the case had been developed by P.Ws.1 and 2 as if the deceased had died due to the cruelty and torture committed by the accused by demanding dowry. However, when the case of demand of dowry on the part of the accused has not been established by the prosecution in any manner and furthermore, the Investigation Officer examined as P.W.13 having also admitted that the marriage of the deceased was originally fixed only with another person and the panchayatar had given statement that the deceased had resided with A1 only for one or two days and for the rest of the period, she had been living only with her parents and further having admitted that the complaint had not been lodged against A3 and further having admitted that no demand of dowry had been put forth in the complaint and as above pointed out, the panchayatars examined in the matter having failed to support the prosecution case, in the light of the abovesaid position, merely on the basis of the evidence of P.Ws.1 and 2, it cannot be held that the deceased had been subjected to mental agony and stress by the accused by demanding dowry as put forth by the prosecution. The trial court had failed to appreciate the abovesaid aspects of the matter in the right perspective and without any basis proceeded to hold that the deceased had committed suicide only on account of the harassment caused to her by the accused. When the harassment and cruelty attributed against the accused is only based on the dowry demand, however, when the dowry demand made by the accused has not been established and the deceased is also not found to have died on account of the dowry demand put forth by the accused and when there is no physical assault caused to the deceased by the accused in any manner and on the other hand when it is found that the marital life between the deceased and the first accused had not been smooth from the inception, accordingly, it is seen that the deceased was unable to continue her marital life with the first accused on account of her previous affair with one Chinnasamy and in such view of the matter, the prosecution having failed to establish the alleged cruelty and torture committed by the accused persons on the deceased and thereby

caused her mental agony and stress, in such view of the matter, the conviction of the accused for the offence punishable under Section 498-A IPC cannot be sustained in any manner.

16. In the light of the abovesaid factors, when the prosecution case is beset with serious doubts, failings, infirmities, surmises and conjectures and when with reference to the same, no plausible explanation is offered on the part of the prosecution, in such view of the matter, the benefit of doubt emanating from the same should be extended in favour of the accused and accordingly, it has to be held that the presumption of innocence of the accused persons had not been dislodged by the prosecution and in such view of the matter, the conviction of the accused under Section 498-A IPC has to be set aside.

17. The counsel for the accused in support of his contentions placed reliance upon the decision reported in 2019 (3) MadWN (Cri) 579 (Sakthi and others vs. State rep. by the Assistant Commissioner of Police, Villivakkam Range, Chennai). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

18. For the reasons aforesaid, the judgment dated 10.10.2013, passed in S.C.No.33 of 2010 on the file of the Mahalir Neethi Mandram (FTMC) Dharmapuri, convicting and sentencing the appellants/accused under Section 498-A IPC are set aside and resultantly, the appellants/accused are acquitted of the offence under Section 498-A IPC and accordingly, the Criminal Appeal is allowed. Bail bond, if any, executed by the accused shall stand discharged. The fine amount, if any, paid by the accused persons shall be refunded to them.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Mahalir Neethi Mandram (FTMC) Dharmapuri,
2. The Judicial Magistrate, No.II, Dharmapuri.
3. The Chief Judicial Magistrate, Dharmapuri
(For Information)

4. The Inspector of Police,
Indur Police Station,
Dharmapuri District.

5. The Public Prosecutor,
High Court, Madras.

Copy To

6. The Section Officer,
V.R.Section,
Madras High Court, Chennai

CRL A.No.702 of 2013

NR (CO)
GMY (28/07/2020)



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