

BAIL SLIP

The Appellant/Accused namely Radhakrishnan, S/o.Ezhumalai in SC No.255/2012 on the file of the Mahila Fast Track Court, Tiruvallur, he was release on bail as per the order of the Hon'ble Court dated 31.10.2014 in Crl.MP.No.1 of 2014 in Crl.A. No.538 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2020

Pronounced on : 17.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.538 of 2014

Radhakrishnan ...Appellant

.Vs.

The State Rep. By
The Inspector of Police,
Valasaravakkam Police Station,
Chennai ...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of conviction and sentence passed by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track-Mahila Court), Thiruvallur, in S.C.No.255 of 2012 dated 22.09.2014.

For Appellant : Mr.N.R.Elango, Sr. Counsel
for M/s.SVAAK LEGAL

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

J U D G M E N T

The present Criminal Appeal has been filed to set aside the judgment of conviction and sentence dated 22.09.2014 passed in S.C.No.255 of 2012 by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track-Mahila Court), Thiruvallur.

2. The appellant is the sole accused. He stood charged for the offence under Sections 498-A, 306 and 304-B of IPC. By

judgment dated 22.09.2014, the learned Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, convicted the appellant under Section 498-A of IPC and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for six months. The appellant is further convicted for the offence under Section 306 of IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one year. However, he was acquitted for the charges under Section 304-B of IPC. Challenging the conviction and sentence, the accused is before this Court, with the present criminal appeal.

3. The case of the prosecution, in brief, is as follows:

(i) PW1-Kalpana, is the mother of the deceased Kavitha. The marriage between the said Kavitha and the accused was solemnised on 22.01.2010. During the time of marriage, 10 sovereigns of gold and one Pulsar bike were given by the parents of the deceased, to the accused. After the marriage, both the accused and the deceased were leading a matrimonial life in Ramapuram. After two months from the date of marriage, the accused, regularly consumed liquor and beaten the deceased. Further, without attending any work, compelled the deceased to bring some money from her parental home. The harassment and the cruelty committed by the accused were all informed to PW1.

(ii) On 13.10.2010, the aunt of the accused informed the death of the deceased to PW3-Saravanan, who is the brother of the deceased. Prior to 15 days from the date of occurrence, marriage of the said Saravanan was performed and at that time, the accused harassed the deceased and compelled to bring some money from PW1. Further, the said harassment committed by the accused was known to PW1 and others.

(iii) Immediately after knowing the death of the deceased, PW1, along with her daughter PW2-Tanuja and son PW3-Saravanan went to the Government Hospital, Royapettah and saw the dead body of the deceased Kavitha. PW1 found that there was an injury in the neck of the deceased and also there was one injury in the eye of the deceased. On seeing the same, PW1, lodged a complaint under Ex.P1, before the police, saying that the deceased committed suicide due to the harassment and cruelty committed by the appellant/accused.

(iv) On receipt of the complaint given by PW1, Mr.K.Rajaram [PW11], the Sub Inspector of Police, R9-Valasaravakkam Police Station registered a case in Crime No.719 of 2010 under Section 174(3) of Cr.P.C. The printed FIR has been marked as Ex.P6. After registration of the case, PW13-Mr.Madasamy, the then Inspector of Police, R9-Valasaravakkam Police Station, took up

the case for investigation and on the same day, he sent intimation to the Revenue Divisional Officer for preparing the inquest report.

(v) On receipt of the copy of the FIR, PW12-Mr.Kanthasamy, the then Revenue Divisional Officer, visited the hospital, wherein the dead body is available and after examining the witnesses, he prepared an inquest report under Ex.P7. According to him, due to the demand of dowry made by accused, the deceased committed suicide. After completing the inquest, he sent a requisition to the Doctor for conducting postmortem.

(vi) On receipt of the same, PW9-Dr.V.Dekal, attached with Government Hospital, Royapettah, on 14.10.2010, at about 3.30pm conducted the autopsy and found the following injuries.

"Injuries:

1) An incomplete, asymmetrically oblique, well defined, brown ligature abrasion 26 x 3-2.5 cm, on front and sides of upper part of the neck, above the level of thyroid cartilage. The ligature abrasion was 6cm below the chin, 8cm above the suprasternal notch and was 4cm & 5.5cm below right & left mastoid processes respectively; On dissection: The subcutaneous soft tissues underneath the ligature abrasion were pale; Hyoid bone and other laryngeal cartilages were intact.

There were no other external or internal injuries anywhere on the body.

Heart: Normal in size; C/S: Chambers contained clotted blood; Valves: Normal; Coronaries: Patent; Great Vessels: Normal.

Lungs: Normal in size; C/S-Congested. Larynx & Trachea: Empty, Hyoid Bone: Intact.

Stomach: Empty; no definite smell; Mucosa: Congested. Intestines: Contained brown Chyme.

Bladder: Empty. Uterus: Normal in size; C/S-Empty.

Liver, Spleen and Kidney: Normal in size; C/S: Congested.

Pelvis & Spinal column: Intact.

Skull: Intact. Brain: Normal in size & softened; surface vessels were congested.

He issued a post-mortem report under Ex.P5, stating that the deceased would appear to have died of Asphyxia due to hanging.

(vii) In continuation of the investigation, PW13, visited the scene of occurrence, and in the presence of witnesses viz., Balasubramani [PW5] and one Balamurugan, he prepared the observation mahazar under Ex.P2. He had drawn the rough sketch and the same was marked as Ex.P8. He made arrangements for taking photographs in the occurrence place. Further, in the

presence of same witnesses, he recovered the dupatta, under the cover of Mahazar, Ex.P3. He examined the witnesses and recorded their statements. After completing the post-mortem, through one Head Constable, he entrusted the dead body to the relatives of PW1. He altered the Section of law from Section 174(3) Cr.P.C. to Sections 498-A, 306 and 304-B of IPC. The alteration report has been marked as Ex.P9.

(viii) On 15.10.2020, PW13 arrested the accused and sent him to remand. He forwarded the material objects to the Court and after examining the Doctor, who conducted post-mortem and the Revenue Divisional Officer, who prepared the inquest report, he came to the positive conclusion that the accused has committed an offence under Sections 498-A, 306 and 304-B of IPC and filed a final report.

4. Based on the above materials, the trial Court framed the charges for the offence under Sections 498-A, 306 and 304-B of IPC. The accused denied the same and opted for trial. Therefore, the accused was put on trial.

5. During the time of trial, in order to prove their case, on the side of the prosecution, as many as 13 witnesses have been examined as PW1 to PW13 and 10 documents were marked as Ex.P1 to Ex.P10, besides two material objects viz., M.O.1 and M.O.2.

(i) Out of the said witnesses, PW1-Kalpana, is the mother of the deceased Kavitha. She has stated about the solemnisation of the marriage between the deceased and the accused and about the harassment committed by the accused. According to her, the death of the deceased was intimated to his son and thereafter, she along with her relative, went to the Government Hospital, Royapettah and found the dead body of the deceased Kavitha.

(ii) PW2-Tanuja is the sister of the deceased Kavitha. PW3-Saravanan, is also the brother to the deceased. Both of them have stated about the marriage of the deceased with the accused and about the Sreethana property given at the time of marriage. They have specifically stated that before the occurrence, the accused had constantly consumed liquor and beaten the deceased and compelled to bring some money from her parental home.

(iii) PW4-Mohan, is the husband of PW2. He speaks about the marriage of the deceased and also about the harassment made by the accused to the deceased.

(iv) PW5-Balasubramani, is the landlord. During the time of occurrence, both the deceased and the accused were residing in his house. He has deposed before the trial Court that on

12.10.2010, the accused quaralled with the deceased and thereafter at about 5.30am, the accused met him and made a request to arrange an autorickshaw for admitting the deceased in the hospital.

(v) PW6-Mani, is the photographer. He speaks about the details in respect to the taking of photographs in the occurrence place.

(vi) PW7-Dr.Ravi, attached with Royapettah Government Hospital is the Doctor, who declared the death of the deceased and issued an Accident Register Copy under Ex.P4 in respect to the ligature mark found in the deceased.

(vii) PW9-Dr.V.Dekal, is also a Doctor attached with Royapettah Government Hospital, speaks about the details of injuries found during the time of post mortem and also about the opinion given in respect to the cause of death.

(viii) PW10- is the brother of the PW1 and he speaks about the matrimonial life of the deceased.

(ix) PW11-Mr.Rajaram, the then Sub Inspector of Police, speaks about the receipt of complaint from PW1 and about the registration of the case. PW12-Mr.Kanthasamy, the then Revenue Divisional Officer, speaks about the preparation of the inquest report and PW13-Mr.Madasamy, the Inspector of Police has stated about the examination of witnesses, receiving of the post-mortem report, about the examination of Doctor, who conducted the post-mortem and about the filing of the final report.

6. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, in order to prove his case, he neither produced any witness on his side nor marked any documents.

7. Having considered the materials placed before him and also upon considering the arguments advanced by either side, the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Thiruvallur, came to the conclusion that the appellant herein, is found guilty for the offence under Sections 498-A and 306 IPC and accordingly, convicted and sentenced him as indicated in the 2nd paragraph of this judgment. Aggrieved over the conviction and sentence, the accused has come up with the present appeal.

8. The learned senior counsel appearing for the appellant/accused would contend that for sustaining the conviction under Section 306 of IPC, it is for the prosecution to prove that during the time of occurrence, the accused herein

abetted the deceased for committing suicide, further, such abetment being one under Section 107 of IPC. But, herein it is a case, nothing was narrated by the prosecution witnesses, in respect to the abetment of act committed by the accused. Accordingly, he is not found guilty under section 306 of IPC.

9. Further, the learned senior counsel appearing for the appellant/accused would contend that the circumstances now narrated by the prosecution witnesses, is not in the form to prove the wilful act, which likely drove the deceased to commit the suicide and accordingly, the offence under Section 498-A of IPC has also been not proved. According to him, the conviction and sentence under Sections 306 and 498-A of IPC, is liable to be set aside.

10. Per contra, the learned Additional Public Prosecutor appearing for the respondent would contend that the evidence given by the PW1 to PW3, proved the occurrence that everyday the accused/appellant herein came to his house in a drunken mood and had beaten the deceased. The constant harassment made by the accused/appellant had driven the deceased for committing the suicide and thereby, the conviction under Section 498-A of IPC, is sustainable.

11. I have heard the learned senior counsel appearing for the appellant/accused and the learned Additional Public Prosecutor for the respondent / State and also perused the records carefully.

12. Before the trial Court, the mother of the deceased Kalpana was examined as PW1 and the sister of the deceased, one Tanuja was examined as PW2. Further, one Saravanan, who is the brother of the deceased and one Mohan who is the husband of PW2, are examined as PW3 and PW4 respectively. In respect to the harassment made by the accused, PW1, has stated before the trial Court that the deceased constantly informed that everyday after consuming the liquor, the accused used to beat her. Further, during the time of such occurrence, the accused made demand to bring more dowry and also forced the deceased to attend some work. The said evidence given by PW1, was corroborated through the evidence of PW2 to PW4.

13. Therefore, culling out the entire evidences given by the PW1 to PW4, reveals the fact that the accused herein often came to his house in drunken mood and he had beaten the deceased. More than that, the house owner of the deceased gave evidence as PW6 that prior to the occurrence, both the accused and his wife, have quarrelled with each other. Accordingly, it seem that due to the habit having by the accused, he created a unpleasant situation in the house of the deceased and constantly asked

money from the deceased for consuming the liquor.

14. Now, in the said circumstances, it is necessary to find out whether the attitude committed by the accused such as consuming the liquor or beating the deceased, amounts to abetting the deceased for the commission of suicide.

15. In this regard, the reading of the entire evidence given by PW1 to PW4 would reveal the fact that the accused/appellant has not intentionally aided the deceased for committing the suicide. Without any positive act on the part of the accused to instigate or aid the suicide, it cannot be said that the accused committed an offence, which is punishable under Section 306 of IPC.

16. At this juncture, it is relevant to see the judgment of our Hon'ble Apex Court in M.Mohan Vs. State, rep. By the Deputy Superintendent of Police, reported in AIR 2011 SC 1238, wherein it was held as follows:

"Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature is clear that in order to convict a person under Section 306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to pushed the deceased into such a position that he/she committed suicide.

17. Therefore, applying the ratio laid down in the above referred judgment, herein also the intention of the accused is that to get money from the deceased, for consuming the liquor. In otherwise, he is not at all having any intention that his wife has to die. Further, here it is a case that cause of suicide is nothing but, due to the regular harassment and cruelty given by the accused. Therefore, due to reason that the said harassment, is not intentional for committing suicide, by the accused, the conviction and sentence awarded by the Court below under Section 306 of IPC, is unsustainable. Accordingly, the conviction and sentence awarded by the trial Court for the offence under Section 306 of IPC, is liable to be set aside.

18. In respect to the offence under Section 498-A of IPC, as already observed that before the occurrence, the accused had regularly beaten the deceased in a drunken mood and thereby the said unpleasant situation, is likely to drive the deceased for committing the suicide. Further, in respect to the cruelty, to

attract Section 498-A of IPC, it must be established that the cruelty or harassing the wife was to force her to commit suicide.

19. Cruelty can either be mental or physical. It is difficult to straightaway term cruelty by means of a definition, because cruelty is a relative term.

20. At this juncture, it is relevant to see the judgment of this Court in Nageshkumar Vs. State by Inspector of Police, R4 Pondy Bazaar Police Station, Chennai, reported in 2010 (2) MLJ CrI. 840, wherein, it was held as follows:

"Traditionally in the society, woman is subjected to the whims and caprices of man, especially when it relates to the relationship of wife and daughter-in-law in a joint family. Life in this case to the deceased Ramadevi had become so intolerable and so miserable, where the cruelty and ill treatment spread over to her grown up children, that had dragged them towards suicide. Unhappy atmosphere in the family of the deceased and indifferent attitude of the appellant proved that the appellant has failed to guard his wife and children and he failed in his responsibility owned to his wife and children. There is positive and convincing evidence that the indifferent attitude of her husband made her and children fed up with their life and certainly there is a proximity and nexus between the conduct and behaviour of the appellant with that of the suicide committed by his wife and the children."

21. Therefore, herein also, there was a positive and convincing evidence that the accused herein committed cruelty by way of creating an unpleasant situation. Further, the demand made by the accused to bring the money from her parents, would not amount to demand of dowry. Because of the reason that the said demand is not within the definition of Dowry Prohibition Act, the same may be construed as unlawful demand. Clause (b) of Section 498-A IPC contemplates harassment of a woman, is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security, amounts to cruelty.

22. Herein also, the evidence put forth by the prosecution witnesses prove that before occurrence, the accused/appellant herein constantly made unlawful demand and thereby he committed cruelty to the deceased and accordingly, he is guilty for the offence under Section 498-A of IPC.

23. In respect to the quantum of sentence awarded to the accused/appellant in the trial Court, convicting the accused

under Section 498-A and sentencing him to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for six months, the learned senior counsel appearing for the accused/appellant made a submission that the accused herein is facing the trial for the past several years and therefore, he prayed for a lenient view in the matter of sentence.

24. Considering the same, it is true the alleged occurrence has happened in the year of 2010 and thereafter, for the past 10 years, the appellant is facing the trial and therefore, this Court is of the considered opinion that awarding one year rigorous imprisonment is sufficient to meet the ends of justice.

25. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed upon the appellant/Accused, by the learned Sessions Judge, Magalir Neethimandram, (Fast Track-Mahila Court), Thiruvallur, in S.C.No.255 of 2012 dated 22.09.2014, is modified as follows:

"(i) conviction and sentence awarded by the trial Court for the offence under Section 306 of IPC, is set aside.

(ii) the accused/appellant is convicted for the offence under Section 498-A of IPC and sentenced to undergo one year of rigorous imprisonment instead of two years and is directed to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for six months

(iii) Since the appellant/accused is on bail, the trial Court shall take steps to secure the appellant/Accused to commit him in prison to serve out the remaining period of sentence. The period of sentence already undergone by the appellant/accused, shall be set off under Section 428 of the Code of Criminal Procedure.

(iv) The fine amount, if any, already paid by the appellant/accused, has to be adjusted, for the sentence now provided."

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

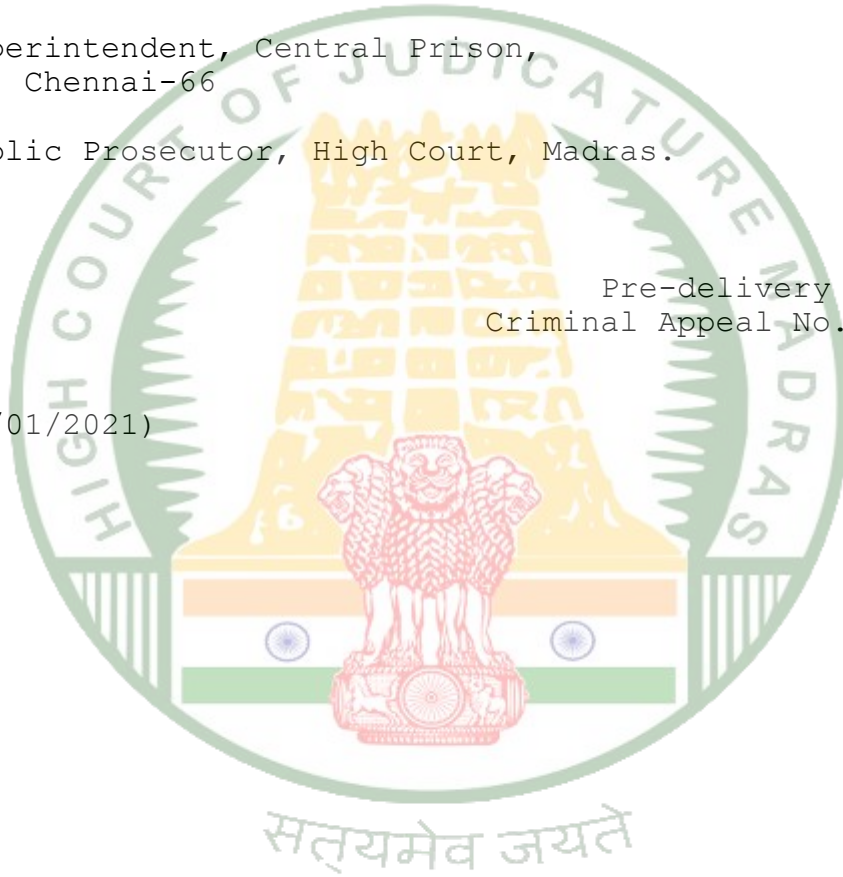
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To

1. The Sessions Judge,
Magalir Neethi Mandram,
Fast Track-Mahila Court),
Thiruvallur,
2. The Inspector of Police,
Valasaravakkam Police Station,
Chennai.
3. The Judicial Magistrate-I, Poonamallee.
4. The Superintendent, Central Prison,
Puzhal, Chennai-66
5. The Public Prosecutor, High Court, Madras.

Pre-delivery judgment in
Criminal Appeal No.538 of 2014

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