

BAIL SLIP

This Appellant herein/Accused viz K.Selvam 46 years has directed to be the learned as bail as per order of this Court dated 02/12/2014 CrI.Mp No.1/2014

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 07.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.A.No.657 of 2014

K.Selvam,
S/o.Krishnaswamy

...Appellant/Accused No.1

versus

State rep. by
The Inspector of Police,
Edaiyur Police Station,
Thiruvarur District.

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the judgment of conviction and sentence passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Thiruvarur dated 09.12.2014 in S.C.No.29 of 2011.

For Appellant : Mr.K.M.Subrahmaniam
For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

सत्यमेव जयते
J U D G M E N T

The present Criminal Appeal has been filed by the appellant to set aside the judgment of conviction and sentence passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Thiruvarur dated 09.12.2014 in S.C.No.29 of 2011.

2. The appellant herein is the first accused/A-1 in the above referred case. He stood charged for the offences under Section 306 of IPC and Section 4(B) of the Tamil Nadu Women Harassment Act, 1998. By a judgment dated 09.12.2014, the

learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Thiruvarur, convicted the appellant under Section 498(A) of IPC and sentenced to undergo Rigorous Imprisonment for two (2) years and to pay a fine of Rs.1,000/-, in default to undergo Rigorous Imprisonment for six(6) months, further acquitted the accused for the offences under Sections 306 of IPC and for the offence under Section 4(B) of the Tamil Nadu Women Harassment Act. Further, A-2 to A-4 were also acquitted for all the charges.

3. Challenging the said conviction and sentence, the accused is before this Court, by way of filing the present Criminal Appeal.

4. The case of the prosecution, in brief, is as follows;

4.1. P.W.1-Duraikannu and P.W.2-Dhamayanthi are the parents of the deceased-Sabeetharani. The marriage between the deceased and the appellant was solemnised on 05.09.2008. At the time of marriage, the parents of the deceased gave 18 sovereigns of gold and household articles. After the marriage, both the deceased and the appellant have been living happily. In the meantime, A-2 and A-4 told the appellant that before the marriage the deceased was stayed in lodge with another person, so that the appellant had suspicion over the character of the deceased and hence, he scolded and assaulted the deceased.

4.2. On 18.10.2010, at about 4.00p.m., the deceased contacted the P.W.2 through phone and told, since she was pregnant, she becomes sick frequently. Further, she told that her husband / appellant did not take care of her and after hearing the same, P.W.2 invited the deceased to her home and make assurance that she will look after the deceased. The deceased replied that she will inform with her husband by next day but at the same day, at midnight, A-1 informed them that the deceased committed suicide.

4.3. Immediately, P.W.1 and P.W.2 along with their family members went to the accused house and seen the dead body of the deceased. On enquiry, the village people told them that A-1 consumed more liquor and assaulted the deceased, further other accused scolded her with filthy language by saying that the deceased stayed at lodge with another person, so the deceased committed suicide. After hearing the same, P.W.1 went to the police station and lodged a complaint under Ex.P.1.

4.4. P.W.15-Samarasam, the then Inspector of Police, on 19.10.2010, when he was working as Inspector of Police in Edaiyur Police Station, received a complaint from P.W.1 and registered a case in Crime No.214 of 2010 under the head 174 Cr.P.C. The printed F.I.R. was marked as Ex.P.6. After

registration of the F.I.R., he handed over the same to the Revenue Divisional Officer, Mannargudi, for enquiry. Further, he forwarded the copy of the F.I.R. to the Deputy Superintendent of Police, for further investigation.

4.5. On receipt of the F.I.R., the Revenue Divisional Officer, Mannargudi, conducted enquiry and in the presence of Panchayators, he prepared inquest report under Ex.P.8. He sent a requisition to the Hospital authorities for conducting post mortem over the dead body of the deceased-Sabeetharani.

4.6. On receipt of the requisition given by the Revenue Divisional Officer, P.W.12-Dr.Sivakumar attached with Government Hospital, Thiruthuraipoondi, on 19.10.2010, conducted post mortem over the dead body of the deceased- Sabeetharani and found the following injuries;

"Internal Examination

Head : No injury to skull vault and brain matter, brain appears congested.

Neck : Small haemorrhages in underlying layers below ligature mark. Hyoid bone intact. Thyroid cartilage normal. Epiglottis congested. Neck bones normal.

Thorax : Thorax cage normal. Lungs congested, no injuries.

Heart : No injury. About 100ml of clotted blood present.

Abdomen : 50 ml of semisolid food pregnant.

Liver, Kidney, Spleen normal. Bladder normal. Uterus contain about 3 months old death fetus. No injuries - Uterus congested."

4.7. He collected the viscera and sent the same for chemical examination. In the chemical examination, he found that there was no poisonous substance available. In turn, on seeing the report given by the chemical examiner, P.W.12 issued a post mortem certificate under Ex.P.4 and has given a final opinion as the deceased would appear to have died due to hanging.

4.8. In the meantime, P.W.14-Sarvanan, the then Deputy Superintendent of Police, Muthupettai, on receipt of the copy of the F.I.R., visited the scene of occurrence and in the presence of witnesses, he prepared observation mahazar under Ex.P.2. He drawn rough sketch under Ex.P.5. Further, in the presence of the same witnesses, he recovered towel knotted with dhothi under the cover of mahazar, which has been marked as Ex.P.3. He examined the witnesses and recorded their statements. Thereafter, he altered the section of law from Section 174 Cr.P.C. to Section 306 IPC and Section 4(B) of the Tamil Nadu Women Harassment Act and sent the alteration report to the jurisdictional magistrate.

Since the Revenue Divisional Officer given opinion as the death was not due to dowry demand, he forwarded the case records to P.W.15 for further investigation.

4.9. In turn, P.W.15-Samarasam, the then Inspector of Police, visited the scene of occurrence and examined the witnesses, who are all examined already by the Revenue Divisional Officer. Since the said witnesses were stated the same statements before P.W.15, he has not recorded the said statements. On 21.10.2020, at about 12.00 noon, he arrested all the accused and make arrangements for sending them to judicial custody. He examined the Doctor, who conducted autopsy and after completion of investigation, he came to the positive conclusion that the accused are all committed the offences under Section 306 of IPC and Section 4(B) of the Tamil Nadu Women Harassment Act, 1998. He filed a final report accordingly.

5. Based on the above materials, the trial Court framed charges under Sections 498(A), 306 of IPC and Section 4(B) of the Tamil Nadu Women Harassment Act, 1998. The accused denied the same and opted for trial. In order to prove their case, on the side of the prosecution, as many as 15 witnesses were examined as P.W.1 to P.W.15 and 8 documents were exhibited as Exs.P.1 to P.8. Besides one material object as M.O.1.

6. Out of the said witnesses, P.W.1-Duraikannu and P.W.2-Dhamayanthi are the parents of the deceased, they speaks about the marriage solemnised between the appellant and the deceased. According to them, after the marriage, the in-laws of the deceased told the appellant as the deceased was stayed at lodge with third parties before her marriage. Thereafter, the appellant frequently consumed liquor and made harassment to the deceased. One day prior to the date of occurrence, the deceased called P.W.2 and informed as she was suffering from some ailments, for which, the appellant did not take any steps to brought the deceased to the Hospital. However, on the same day, at about 1.00p.m., the appellant called P.W.1 and informed as the deceased committed suicide. Thereafter, P.W.1 and P.W.2 visited the house of the deceased and lodged the complaint before P.W.15.

7. P.W.3-Umarani, is the sister of the deceased, P.W.4-Vikkiramanthithan, is the in-law of the deceased and P.W.5-Ilamaran, is the brother of the deceased-Sabeetharani, all of them gave evidences in support of the evidences given by P.W.1 and P.W.2.

8. P.W.6-Anbarasu, is the President of Sellur Panchayat, speaks about the information received by him in respect to the death of Sabeetharani.

9. P.W.7-Velayutham, is the resident of the same village, in which, P.W.1 and P.W.2 are residing, he has also stated about the family dispute having by the deceased with her mother-in-law and in-laws.

10. P.W.8-Subramaniam, speaks about the preparation of observation mahazar and rough sketch by the Investigating Officer.

11. P.W.9-Sukumaran, P.W.10-Muthuvel and P.W.11-Ravichandran, are the neighbours to the appellant. Though they are cited as an occurrence witnesses, during the time of giving evidence, they are not supported the case of prosecution and hence, they were treated as hostile witnesses on the side of the prosecution. Even during the time of cross examination by the Public Prosecutor, they have not supported the case of prosecution.

12. P.W.12-Dr.Sivakumar, attached with Government Hospital, Thiruthuraipoondi, speaks about the details of injury sustained by the deceased and about the cause of death.

13. P.W.13-Natarajan, the then Head Constable, speaks about the entrustment of dead body to the Doctor for conducting post mortem.

14. P.W.14-Saravanan and P.W.15-Samarasam, are the Police Officers speak about the registration of the case, details of investigation and about filing of the final report.

15. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any documents on his side.

16. The learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Thiruvavarur, after perusing all the above materials and on considering the arguments advanced by either side, convicted and sentenced the appellant as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court with this appeal.

17. I have heard Mr.K.M.Subrahmaniam, learned counsel appearing for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State. I have also perused the records carefully.

18. The learned counsel appearing for the appellant would contend that the evidences given by the prosecution witnesses are having lot of contradictions. He further submitted

that in respect to the cruelty committed towards the deceased, two sets of evidences are put forth by the prosecution witnesses. According to him, the prosecution has not proved its case beyond reasonable doubt.

19. Per contra, the learned Additional Public Prosecutor appearing for the respondent police on instructions would submit that the evidences put forth by the prosecution witnesses, namely, P.W.1 to P.W.5 have categorically stated the harassment committed by the accused and the same is sufficient to hold that the appellant herein committed cruelty towards the deceased and therefore, holding that the appellant committed the guilt of offence under Section 498-A of IPC is found correct. According to him, interference of this Court is not necessary in the judgment rendered by the trial Court. Hence, he prays to dismiss the appeal.

20. I have considered the rival submissions made on either side and perused the records carefully.

21. Initially, in the complaint given before the police, P.W.1, who is the de facto complainant did not raise any allegation against the appellant. In the complaint, he made allegations only against the in-laws of the deceased stating that they will alone made harassment to the deceased and demanded to bring more dowry. Subsequent to that, during the time of giving evidence, he levelled the allegation against the appellant as the appellant regularly consuming the liquor and quarrelled with the deceased. The said evidence given by P.W.1 is corroborated through the evidence of P.W.2.

22. Though the evidences given by P.W.1 and P.W.2 are in respect to the harassment made by the appellant, since the same has not been brought in the First Information Report, which is the earliest document in this case, it is necessary to consider the evidences given by P.W.1 and P.W.2 with great caution. In their cross examination, both P.W.1 and P.W.2 admitted that on the day of occurrence, the deceased contacted the P.W.2 and informed that her husband/appellant did not take any steps to brought her to the Hospital for taking treatment. Further, both of them have stated that when at the time P.W.2 invited the deceased for her house, the deceased replied as after informing the same to the appellant, she will come to P.W.1's house. If really, the appellant committed cruelty towards the deceased, it is unnecessary for her to get permission from the appellant for going to her parent's house. Therefore, on close scrutiny of the entire evidences given by P.W.1 and P.W.2 reveal the fact that the appellant has not committed any harassment to the deceased.

23. However, P.W.3 to P.W.5, who are relatives of the deceased had stated before the trial Court as after the marriage, the mother-in-law and sister-in-law of the deceased told to the appellant that the deceased was stayed at lodge with another person. Only after hearing the same, the appellant regularly came to the house in a drunken mood and assaulted the deceased frequently. The said evidences given by P.W.3 to P.W.5 are attracted alone in respect to the offence under Section 498-A of IPC.

24. In this regard, the cruelty, within the meaning of Section 498-A of IPC, has been explained in the same section, which is as follows:

"The cruelty within the meaning of Section 498-A I.P.C. has been explained in the Explanation to Section 498-A. It consists of two clauses namely Clauses (a) and (b). To attract Section 498-A I.P.C., it must be established that the cruelty or harassment to wife was to force her to cause grave bodily injury to herself or to commit suicide, or the harassment was to compel her to fulfil illegal demand of dowry. It is not every type of harassment or cruelty that would attract Section 498-A I.P.C.

Cruelty can either be mental or physical. It is difficult to straitjacket the term 'cruelty' by means of a definition, because cruelty is a relative term. What constitutes cruelty for one may not constitute cruelty for another person."

25. Here, it is a case, the evidences given by P.W.3 to P.W.5 may be in support of the above said factors, on the other hand, the evidences given by P.W.1 and P.W.2 are not in the form that before the occurrence the accused committed cruelty or harassment towards the deceased. Therefore, in respect to the harassment committed by the accused, two sets of evidences are available from the prosecution witnesses.

26. The trial Court while at the time of deciding this issue by relying Section 106 of Indian Evidence Act, came to the conclusion that during the time of occurrence, the husband was also in the house and therefore, he is having the duty to explain under what circumstances, the deceased committed suicide. In fact, during the time of examining the accused under Section 313 Cr.P.C., nothing has been stated by the accused in respect to the circumstances under which the deceased go to the level of committing suicide.

27. However, according to P.W.1, after the occurrence, the appellant alone informed the occurrence to P.W.1 and P.W.2. On the other hand, P.W.2 stated in her cross examination as one Sukumar, who is the neighbour to the deceased informed the occurrence and also stated that the accused is in unconscious stage. Therefore, as per the said evidence, during the time of occurrence, the accused was not in a stage to see the suicide committed by the deceased. In this area also, the evidence put forth by the prosecution is creating a doubt that during the time of occurrence, whether the accused is in the stage of conscious or unconscious. If the accused was in unconscious stage, it is not fair to expect the proper explanation from the accused in respect to the death of the deceased.

28. At this juncture, in the judgment of PADALA VEERA REDDY vs. STATE OF ANDHRA PRADESH reported in AIR 1990 SC 79, wherein our Hon'ble Apex Court has held as follows;

"10. Before advertng to the arguments advanced by the learned counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:-

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. [See Gambhir v. State of Maharashtra, (1982) 2 SCC 351 : (AIR 1982 SC 1157)."

29. Here, it is a case, as already observed, the evidence put forth by the prosecution witnesses in respect to the harassment and cruelty committed by the accused is not a cogent one and therefore, the same does not inspire the confidence of this Court.

30. In the light of the above discussions stated supra, I am of the considered opinion that the findings arrived at by the trial Court in respect to the harassment or cruelty committed by the accused is found to be not correct. Therefore, the conviction and sentence imposed upon the appellant / accused by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Thiruvavarur dated 09.12.2014 in S.C.No.29 of 2011 is set aside.

31. Accordingly, this Criminal Appeal is allowed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Magalir Neethimandram
(Fast Track Mahila Court),
Thiruvavarur.
- 2.The Judicial Magistrate, Thiruthuraipoondi
- 3.The Chief Judicial Magistrate, Thiruvavarur.
- 4.The Inspector of Police,
Edaiyur Police Station,
Thiruvavarur District.
- 5.The Public Prosecutor,
High Court, Madras.

Crl.A.No.657 of 2014

VG II (CO)
KKV/08/01/2021