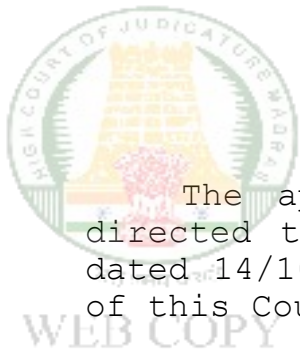




Bail Slip

The appellant/Sole Accused namely Nagaraj, S/o.Maruthai, was directed to be released on bail as per the order of this Court, dated 14/10/2014 in MP(MD)No.12014 in CA(MD)No.280/2014 on the file of this Court.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Dated : 06.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL. A. (MD) No. 280 of 2014

Nagaraj

.. Appellant / Sole Accused

- Vs -

The Deputy Superintendent of Police,
Viralimalai Police Station.

(Crime No.319 of 2011)

.. Respondent / Complainant

Prayer : Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to set aside the judgment and conviction and sentence dated 15.09.2014 in S.C.No.12 of 2013 passed by the learned Sessions Judge, Mahila Court, Pudukottai.

For Appellant : Mr.AL.Kannan

For Respondent : Mr.K.Suyambulinga Bharathi

Governement Advocate (Criminal side)

JUDGMENT

This Criminal Appeal has been filed against the judgment made in S.C.No.12 of 2013 passed by the learned Sessions Judge, Mahila Court, Pudukottai, dated 15.09.2014, convicting the accused for an offence under Section 498 (A) I.P.C.

2. The appellant is a sole accused in this case. The appellant was found guilty by the trial Court, convicted and sentenced as follows:

Penal Provision	Punishment
Section 498 (A) I.P.C.	To undergo Three years Rigorous Imprisonment and to pay a fine amount of Rs.50,000/- in default to undergo six months Rigorous Imprisonment



3. The facts of the case are briefly stated hereunder:

The case of the prosecution is that the appellant got married to the deceased during the year 2007 and it was a love marriage. Thereafter, both of them were living together and out of their wedlock, they had two children latter, their relationship was not that happy. Since it was a love marriage, the deceased parents' were not in talking terms with the appellant. On 16.10.2011, the deceased went to her parents' house and stayed there. On 17.10.2011, she casted her vote in the Local Body Election and thereafter, at about 03.00 p.m., she again came back to her matrimonial home and at about 09.00 p.m., P.W.1 was informed that her sister was dead. Thereafter, the family members of the deceased reached the house of the appellant and found the body of the deceased in a cot found nobody was present in the house. In this regard, P.W.1 lodged a complaint before the respondent Police-P.W.18 and P.W.18 registered a case for an offence under Section 174 Cr.P.C. in Crime No.319 of 2011, on 18.10.2011, since the death was unnatural. Thereafter, the case was referred to P.W.17-Revenue Divisional Officer and P.W.17 conducted enquiry and gave a report-Ex.P.7. Thereafter, the case was altered to the offence under Sections 498 (A) and 306 I.P.C. P.W.14 is the Forensic Expert, who gave Ex.P.4-Viscera Report. P.W.15 is the Postmortem Doctor, who gave Ex.P.5-Postmortem Report. P.W.16 is the Special Sub Inspector of Police, attached to the Viralimalai Police Station, who identified the body of the deceased in the Hospital. P.W.19 is the Investigating Officer went to the scene of occurrence, recorded the statement of witnesses, prepared Observation Mahazar-Ex.P.9, Rough Sketch-Ex.P.10 and thereafter, P.W.19 completed investigation, altered the offence from 174 Cr.P.C to the offence under Sections 498 (A) and 306 I.P.C., sent an Alteration Report-Ex.P.11 and on completion of investigation filed charge sheet.

4. In order to prove the case, on the side of the prosecution as many as 19 witnesses were examined as PW.1 to PW.19 and 11 documents were marked as Ex.P.1 to Ex.P.11. On the side of the accused, no witness was examined nor any document was marked.

5. When the appellant was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same.

6. The trial Court, on the basis of the oral and documentary evidence, acquitted the appellant for an offence under Section 306 I.P.C. and convicted the appellant for an offence under Section 498 (A) I.P.C. and sentenced to undergo three years rigorous imprisonment and to pay a fine amount of Rs.50,000/- in default to



undergo six months Rigorous Imprisonment, against which, the present appeal has been filed.

Submissions:

7. The learned counsel appearing on behalf of the appellant made the following submissions:

- In this case, P.W.1 is the brother of the deceased. P.W.2 and P.W.3 are father and mother of the deceased. P.W.4 is the sister of the deceased and all are hailing from the same family.
- It is an admitted case that the marriage between the appellant and the deceased was love marriage and after their marriage, the family members of the deceased were not in talking terms with the appellant and the deceased. The deceased used to go to meet her parents and family members.
- It is found that, from the years 2007 to 2011 / till the time of the death of the deceased, there was no complaint against the appellant regarding any dowry demand from the deceased or harassment or subjected the deceased to cruelty.
- Out of their wedlock, they have two children and now both are residing with the appellant's family.
- Further, it is seen that P.W.5 is the neighbor of the deceased. From his evidence, it is seen that the appellant was in tears, when he had gone to seek help from P.W.5, informing him about the death of his wife, he asked the appellant to lodge a complaint with the Police. Thereafter, the appellant went to the Police Station. In the meanwhile, the complaint was received from P.W.1 is Ex.P.1. On going through the complaint, it is seen that nowhere in the complaint it is mentioned about any harassment or cruelty meted to the deceased. The only thing as per the complaint is that the family members of the deceased suspect the cause of death of the deceased and nothing else.
- Further, from the evidence of P.W.1 to P.W.4, it is seen that there was no mention about the cruelty subjected to the deceased.
- Further P.W.14-Revenue Divisional Officer conducted inquest and filed Ex.P.7. In her report, she had given a finding, there was no demand of dowry and there was no mention of any harassment or cruelty at the hands of the appellant on the deceased.
- Further, as per Ex.P.5-Postmortem Report and Ex.P.6-Final Report, it is stated that the deceased died due to consumption of poison and as per Ex.P.4-Forensic Report, the deceased died on consumption of organophosphorus pesticide, which is normally used by the Agriculturist and it is available easily.
- The Trial Court in its judgment without giving any valid reasons had convicted the appellant for an offence under Section 498 (A) I.P.C. Hence, he prayed for acquittal.



8. The learned Government Advocate (Criminal side) appearing on behalf of the respondent Police made the following submissions:

- In this case on the complaint-Ex.P.1 received from P.W.1/brother of the accused, P.W.18 / Sub Inspector of Police, registered First Information Report-Ex.P.8. Thereafter, P.W.18 sent F.I.R to P.W.17-Revenue Divisional Officer and P.W.17 on receipt of F.I.R went to the scene of occurrence, conducted inquest, examined witnesses and gave a report-Ex.P.7. The Investigating Officer-P.W.19 on receipt of report from the Revenue Divisional Officer filed an Alteration Report-Ex.P.11 and altered the offence under Section 174 Cr.P.C., to the offence under Sections 306 and 498 (A) I.P.C., arrested the appellant and confession was recorded. P.W.19 is the Investigating Officer, who examined the witnesses viz., P.W.1 to 4 and in their evidence, they had stated that the deceased being subjected to cruelty at the hands of the appellant.
- Further, the categorical findings in the report of the Revenue Divisional Officer-Ex.P.7 is that, the deceased is the third wife of the appellant and earlier, the appellant had two wives, of which, his first wife is still alive and this amounts to cruelty.
- P.W.4 is the sister of the deceased had categorically stated in her evidence that the deceased being subjected to cruelty.
- P.W.1 to P.W.4 are strangers to the Village. P.W.5 to P.W.13 are the relatives of the appellant and hence, they have not supported the case of the prosecution. The above said witnesses are not supporting the case of the prosecution, which will not affect the case, since P.Ws.1 to 4 and the official witnesses have clearly spoken about the overt act of the appellant.

9. This Court has carefully considered the submissions made on either side and the entire oral and documentary evidence.

10. Discussions:

10.(1). Considering the rival submissions made on either side and on perusal of materials, it is seen that P.W.1 is the brother of the accused, who received information regarding her sister's death, went to the spot along with P.W.2, P.W.3 and P.W.4, reached the house of the deceased, found the body of the deceased in the cot and nobody was available there. Thereafter, P.W.1 lodged a complaint-Ex.P.1 and in the Complaint, there is no mention about demand of dowry from the deceased and it is only mentioned that there is a suspicious over her sister's death.

10.(2). P.W.1 to P.W.3 have not stated anything about the appellant demand of dowry from the deceased.



10.(3). P.W.4 is the sister of the deceased. In her evidence, she has stated that the deceased was subjected to cruelty. Other than this, uncorroborated statement there is no witnesses or materials to corroborate and connect the appellant.

10.(4). Further, the Revenue Divisional Officer, who conducted investigation, had not given any finding with regard to the deceased being subjected to cruelty at the hands of the appellant.

10.(5). The entire witnesses P.W.5 to P.W.13 have not whispered anything against the appellant.

10.(6). It is an admitted fact that the marriage between the appellant and the deceased was love marriage, which was not accepted by the family of the deceased, there is no cordial relationship between both of the families. The members of both families were living in different Villages and there was no communication and there is no prior complaint of cruelty.

10.(7). It is found that on 16.10.2011, the deceased had gone to the parents' house and stayed there. On 17.10.2011, she casted her vote and at about 09.00 p.m., P.W.1 was informed that her sister was dead and nobody knows what had happened in the meantime. There is no evidence to show that the appellant was the cause of death, subjected deceased to cruelty. The prosecution has not proved its case beyond reasonable doubt.

11. Considering the rival submissions as discussed above and the other materials available on record, this Court is inclined to interfere with the findings of the Trial Court.

Conclusion

12. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in S.C.No.12 of 2013, on the file of the learned Sessions Judge, Mahila Court, Pudukottai, dated 15.09.2014, is set aside and the appellant is acquitted of the charge framed against him. The bail bond, if any, executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



1) The Sessions Judge, Mahila Court, Pudukottai.

2) The Deputy Superintendent of Police,
Viralimalai Police Station.

3) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4) The Section Officer, (2 COPIES)
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.AL.KANNAN, Advocate (SR-891[F] dated 08/01/2020)

JUDGMENT IN
CRL. A. (MD) NO. 280 of 2014
Dated: **06.01.2020**

MK (22.01.2020) 6P 7C