

**BAIL SLIP**

Selvam @ Murugasamy, Male, aged about 41years, (Sole Accused) is released on bail, vide court order dated 03.03.2015, made in MP (MD)No.1/2015 in CRL A(MD)No.17/2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	11.02.2020
Date of Judgment	12.06.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.A(MD)No.17 of 2015

Selvam @ Murugasamy : Appellant/Sole Accused

Vs.

The State rep. by
The Inspector of Police,
Ayakudi Police Station,
Dindigul District.
(Crime No.347 of 2005)

: Respondent/Complainant

Prayer: Criminal Appeal filed under section 374(2) of the Criminal Procedure Code against the judgment of the Mahalir Neethimandram (Fast Track Mahila Court), Dindigul, in SC No.44 of 2009, dated 24.12.2014.

For Appellant : Mr.T.Lenin Kumar

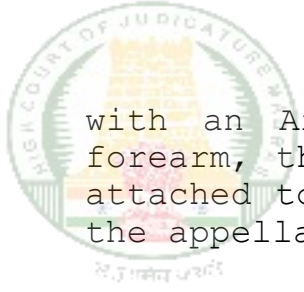
For Respondent : Mr.V.Neelakandan

Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgment of the Mahalir Neethimandram (Fast Track Mahila Court), Dindigul, passed in SC No.44 of 2009, dated 24.12.2014.

2.According to the prosecution, the accused Selvam @ Murugasamy was married to the deceased Navamani before 4 years and then, he subsequently tortured her demanding money and on 22.11.2005 at about 7-1/5 am, he again demanded that Navamani should get money from her father and when she declined to do, with an intention of murdering her, the accused caught hold of her hair and injured her



with an Aruvalmani on her right wrist, then on her neck, left forearm, thereby causing grievous injuries. The Inspector of Police attached to Ayakudi Police Station has filed a final report against the appellant/accused examining the witnesses.

3.The trial court, after appreciation of the entire materials available on record, has convicted the appellant/Accused for the offence under sections 326 and 498(A) IPC and sentenced him to undergo simple imprisonment for a period of 4 years and imposed a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month for the offence under section 326 IPC and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month for the offence under section 498(A) IPC. Aggrieved by the judgment of the trial court, the appellant/Accused is before this court.

4.Heard both sides and perused the materials available on record.

5.The first contention raised on the side of the appellant/accused is that there is no material whatsoever to prove that immediately before the occurrence, there was cruelty and demand of dowry and in the absence of such allegation, the charge of 498-A IPC against the appellant/accused will not sustainable and PW1 and PW2 stated that earlier there was some harassment and the same was pacified in the respondent police station and also in All Women Police Station, Palani and absolutely, there is not even a single line either in the complaint or in the deposition that at the time of occurrence, the appellant/accused demanded dowry and also harassed her and hence, the offence under section 498(A) IPC is not made out.

6.PW2 is the victim. PW1 is the father of PW2. In respect of the occurrence, PW1 gave Ex.P1 complaint statement to the police. PW1 in his complaint stated that at the time of marriage between PW2 and the accused, he gave 25 sovereigns of jewels and Rs.50,000/- cash and utensils and prior to three years, the accused borrowed Rs.20,000/- from his elder daughter Valarmathi and did not repay it and the accused demanded money from her daughter and due to the cruelty by the accused, his daughter (PW2) gave complaint to the All Women Police Station, Palani, on 06.01.2005 and after enquiry by the police, the matter was amicably settled and then, he began to demand money from his daughter and subjected her to cruelty and drove his daughter and then, he gave a complaint on 04.05.2003 before the Ayakudi Police Station and after due enquiry by the police, the accused lived with his daughter. PW1 has not stated in his complaint or in his evidence that on the date of the occurrence, the accused demanded money from her and then, he assaulted his daughter. PW2 has not stated during evidence that her father got Rs.20,000/- from her sister Valarmathi and gave it to her husband, but her husband did not repay it. But in this case, Valarmathi from whom, PW1 arranged Rs.20,000/- to the accused was not examined as a

witness. No reason was stated on the prosecution side for the non-examination of Valarmathi to prove that from Valarmathi, PW1 got Rs.20,000/- and gave it to the accused. No document was produced to show that Valarmathi, the elder daughter gave money to the accused. Further, PW1 in his evidence stated that to repay the debt and to erect bore well, the accused asked money from his daughter. PW1 has not stated that for illegal activities, the accused demanded money from his daughter. PW2 in her evidence stated that the accused demanded money from her. For what purpose, the accused demanded money was not stated by PW2 during her evidence. PW1 and PW2 stated during their evidence that for demanding money by the accused, two complaints were given. To prove that in respect of demand of dowry by the accused, on the side of the prosecution, PW15 and PW16 were examined. PW15 deposed that on 04.05.2005, when he was on duty, PW1 came to the police station and gave a complaint stating that the accused came in a drunken mood and demanded money from her daughter and drove her from the matrimonial home and he made enquiry and settled the matter and on the advise of the police, the accused took her daughter to the matrimonial home.

7.PW16 deposed that on 06.01.2005, when she was on duty, PW2 came to the police station and gave a complaint stating that her husband demanded money and subjected her to cruelty and she made enquiry and settled the matter and the accused took PW2 with him. To prove the above complaint and enquiry, no documents were produced on the side of the prosecution. It was admitted by PW15 and PW17 during their cross examination. PW15 during his cross examination stated as follows:-

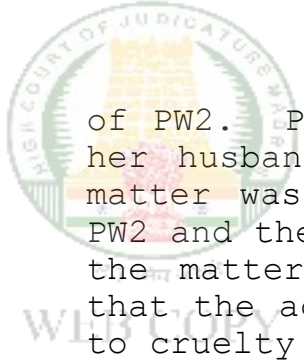
“நான் விசாரணை செய்த மனு மற்றும் அதன் தொடர்புடைய ஆவணங்களை நான் இந்த வழக்கில் தாக்கல் செய்யவில்லை.”

8.PW17 during his cross examination stated as follows:-

“சம்பவத்திற்கு முன்பு தொடர்ந்து ஒருவருடமாக நவமணி கொடுமைப்படுத்தியதாக குறிப்பிடப்பட்டுள்ளது அது சம்மந்தமாக பஞ்சாயத்து நடந்ததாக எனது விசாரணையில் தெரியவில்லை ஏற்கனவே நவமணி எதிரி மீது அனைத்து மகளிர் காவல் நிலையம் மற்றும் ஆயக்குடி காவல் நிலையத்தில் கொடுத்த புகார் எதுவும் நான் விசாரிக்கவில்லை மேலும் அந்த புகார் சம்மந்த ஆவணங்களை நான் கைப்பற்றவில்லை.”

9.Without filing documents to prove that only PW1 and PW2 gave complaints regarding the demand of dowry by the accused, the oral evidence of PW16 and PW17 stating that PW1 and PW2 gave complaints regarding the demand of dowry and they made enquiry and amicably settled is not at all acceptable.

10.To prove the demand of dowry by the accused, on the side of the prosecution, PW3 and PW7 were examined. PW3 is the brother



of PW2. PW3 deposed that due to the dispute arose between PW2 and her husband, a complaint was given in the police station and the matter was settled amicably and then, again dispute arose between PW2 and the accused, a complaint was given in the police station and the matter was settled amicably. PW3 has not specifically stated that the accused demanded money from his daughter and subjected her to cruelty and due to it, she gave the complaints before the police. PW7 deposed that on 22.11.2005 at 6-1/2 am, he crossed the house of PW2, at that time, he saw that quarrel between the accused and PW2 and he enquired it, for that, he came to understand that the accused demanded money from his wife. PW7 has not stated that in his presence, the accused demanded money from his wife. He has stated that he only heard that the accused demanded money from his wife. Hence, the evidence of PW7 is not useful to prove that the accused demanded money at the time of occurrence.

11.To prove the earliest complaints in respect of demand of money by the accused, no document was filed on the side of the prosecution. Without filing the above records, the evidence of PW1, PW2, PW15 and PW16 stating that only PW1 and PW2 gave the complaints in respect of demand of money is not at all acceptable. Only to strengthen this case, PW15 and PW16 were examined. Hence, it is held that prior to the occurrence, the accused demanded money is not at all acceptable since it was not proved by documentary evidence. PW1 and PW2 have not stated during their evidence that on the date of occurrence, the accused demanded dowry and assaulted PW2.

12.At this juncture, it is necessary to refer Section 498(A) IPC, which would run thus:-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

13.To prove the offence under section 498(A) IPC, there must be evidence for cruelty committed by the husband or his relatives. But in this case, there was no documentary evidence to prove that the accused demanded money either on the date of the occurrence or prior to the occurrence and thereby subjected her to cruelty. Further, there was no specific plea in respect of demand of dowry by the accused and subjected PW2 to cruelty either in the complaint or in the evidence of PW1 and PW2. Hence, the offence under section 498 (A) IPC was not proved on the side of the prosecution.

14.The next contention put forth on the side of the appellant/accused is that PW1 in his complaint stated that after receiving the information, when he went to the place of occurrence, he was hacking PW2 and on seeing him, he ran away from the occurrence place and contrary to the said statement, PW7 stated that



the appellant ran away from the occurrence place even before PW1 reached the place and when the presence of PW1 is highly doubtful, the same was not corroborated by any of the evidence and hence, PW1 is a chance witness.

15. PW1 in his complaint stated that after receiving information about the quarrel between PW2 and the accused, he rushed to the place of occurrence. PW1 either in his complaint or in his evidence has not stated that who informed the occurrence to him. PW1 in his chief examination stated that he saw the occurrence. But during his cross examination stated that நான் சம்பவத்தை கேள்விப்பட்டேன் எனது மகளை போல் பார்க்கும் போது அது ரத்த வெள்ளத்தில் கிடந்தது. PW6 is the neighbour of the accused. PW6 deposed that PW2 became unconscious before his house with blood injuries and then, he intimated the above to the parents of PW2. PW7 deposed that he heard the hue and cry of PW2, he went to the place of occurrence and he heard from PW2 that she was assaulted by her husband with Aruvalmani and he intimated the occurrence to PW1. Hence, on careful perusal of the evidence of PW1, PW3 and PW7, it reveals that PW1 came to the place of occurrence only after his daughter sustained injuries. PW3 and PW7 came to the place of occurrence only after hearing the sound of PW2. Hence, it is held that there is no chance for PW1, PW3 and PW7 to see the occurrence. Therefore, the argument put forth on the side of the accused stating that PW1 is a chance witness and PW3 and PW7 have not seen the occurrence is acceptable.

16. The next contention put forth on the side of the appellant/accused is that the oral evidence of PW1 and PW2 is not corroborated with the medical evidence and prays that the accused is entitled to acquittal.

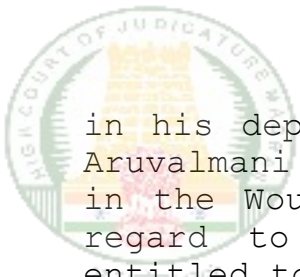
17. PW2 deposed that on 22.11.2005 at 7.15 am, her husband hacked her neck by holding her hair and caused injury with Aruvalmani on the back side of the neck, left forearm and on the right hand wrist. The Doctor, who gave treatment to PW2 was examined as PW11. PW11 deposed that on 22.11.2005 at 8.15 am, when he was on duty, PW2 came with blood injuries and told him that she was assaulted by her husband with Aruvalmani and he found the following injuries:-

(i) deep cut injury on the left neck to an extent of 4 x 2 x 3 cm, blood vessels and muscles were also cut;

(ii) incision on the right wrist to an length of 5 cm; and

(iii) cut injury of 3 cm length on the left elbow.

18. The learned counsel appearing for the appellant/accused submitted that in Ex.P1, it was mentioned that the accused used knife to cut PW2 and subsequently, there was overwriting in the said document by mentioning the nature of weapon as 'Aruvalmani' and PW1



in his deposition stated that the weapon used by the appellant is Aruvalmani and in order to fill up the lacuna, there was overwriting in the Wound Certificate (Ex.P6) and there was contradiction with regard to the weapon and prays that the appellant/accused is entitled to acquittal.

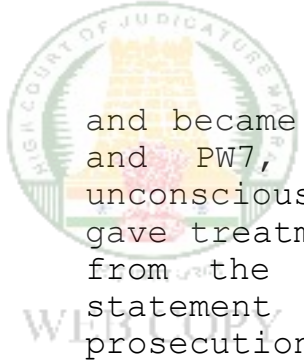
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19. On perusal of Ex.P6, the Wound Certificate issued by PW11, it is mentioned that PW2 was assaulted by her husband with knife and Aruvalmani and for the overwriting, PW11 put his signature. PW11 specifically mentioned that PW2 was assaulted by her husband with Aruvalmani. Hence, from Ex.P6, it reveals that PW2 was assaulted by her husband with Aruvalmani and Arulvamani is a weapon used to cut vegetables and it consist of knife. Generally Aruvalmani contains knife for cutting vegetables. Further, PW11 specifically stated during his evidence that PW2 told him that she was assaulted with Aruvalmani by her husband on the date of occurrence.

20. In this case, PW14 is the arrest and recovery witness. PW14 deposed that on 22.11.2005 at 10.45 am, the Inspector of Police, Ayakudi arrested the accused and the accused gave confession and on the basis of the confession, the accused handed over Aruvalmani near the place of occurrence and it was recovered by way of attachi. Hence, from the evidence of PW14, it reveals that from the accused, Aruvalmani was recovered. PW2 categorically stated during her evidence that her husband assaulted her only with Aruvalmani. Hence, it is held that only with Aruvalmani, the accused assaulted PW2. Therefore, the oral evidence of PW2 is corroborated with the medical evidence. Hence, the argument of the learned counsel for the accused stating that there was no corroboration between the oral evidence of PW1, PW2 and PW11/Doctor is not at all acceptable.

21. The learned counsel appearing for the appellant/accused argued that the prosecution case itself is stage managed because when the injured/PW2 was conscious in the Hospital, the respondent police got statement from PW1, who is the father of the injured/PW2 registered the said case. The Doctor/PW11, who deposed that on 22.11.2005 at about 8.15 am, PW2, who brought to Hospital with consciousness and he further deposed that PW2 talked herself to the Doctor without any problem and PW2 in her cross examination stated that she did not make any complaint before the respondent police and she did not know the person and the person, who lodged the complaint before the respondent police and from the evidence of PW2 and PW11, it is made crystal clear that the entire prosecution case is stage managed and prays that the accused is entitled to acquittal.

22. PW2 during her evidence stated that after the occurrence, she became unconscious. PW4 and PW5 are the persons, who took PW2 in a vehicle. PW4 stated during his evidence that he took PW2 in unconscious stage. PW5 stated during his evidence that he saw PW2 lying on the blood, after the occurrence. PW7 stated during his evidence that after the occurrence, PW2 fell down before his house



and became unconscious. Hence, from the evidence of PW2, PW4, PW5 and PW7, it reveals that after the occurrence, PW2 became unconscious and she was taken to the hospital, at first the Doctor gave treatment and then, the police recorded the complaint statement from the father of PW2. Hence, the receipt of the complaint statement from PW1 is not at all affected the case of the prosecution.

23. In this case, PW2 is the victim and spoke the occurrence. When a solitary evidence is trustworthy, it can be relied upon. In the case of **Govindaraju @ Govinda v. State of Srirampuram P.S. & Anr.**, [Cr1. Appeal No. 984 of 2007 decided on March 15, 2012], the Hon'ble Apex Court held as under: -

"11. Now, we come to the second submission raised on behalf of the appellant that the material witness has not been examined and the reliance cannot be placed upon the sole testimony of the police witness (eye-witness). It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses."

24. In the case of **Lallu Manjhi and Anr. vs. State of Jharkhand (2003) 2 SCC 401**, the Hon'ble Apex Court had classified the oral testimony of the witnesses into three categories:-

"a. Wholly reliable; b. Wholly unreliable; and c. Neither wholly reliable nor wholly unreliable."

12. In the third category of witnesses, the Court has to be cautious and see if the statement of such witness is corroborated, either by the other witnesses or by other documentary or expert evidence. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eye-witness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness



is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty.....

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25. On coming to the instant case on hand, PW2 categorically deposed that on the date of occurrence, her husband assaulted her with Aruvalmani on the back side of her neck, left forearm and on her right wrist. PW11/Doctor found cut injuries on the right wrist and cut injury on the middle of the left arm. Hence, this court is of the considered view that the evidence of PW2 is corroborated with the evidence of PW11/Doctor.

26. For all the reasons stated above, this court is of the considered view that the prosecution has proved the case beyond reasonable doubt in respect of the offence under section 326 IPC. In respect of the offence under section 498(A) IPC, the prosecution has failed to prove the case beyond reasonable doubt and hence, the punishment imposed on the appellant/accused for the offence under section 498(A) IPC is liable to be set aside and accordingly, set aside. However, considering the fact that the appellant/accused is the sole breadwinner, the punishment imposed on the appellant/accused by the trial court for the offence under section 326 IPC is reduced to one year SI.

27. In the result, the Criminal Appeal is **partly allowed**. The punishment imposed by the trial court on the appellant/accused for the offence under Section 498(A) IPC is set aside and the fine amount imposed by the trial court for the said offence is directed to be refunded to the appellant/accused. In respect of the offence under section 326 IPC, the punishment imposed by the trial court is reduced to **one year SI** and the fine amount imposed by the trial court for the said offence is confirmed. The period of sentence, if any already undergone by the appellant/accused shall be given set off under Section 428 of Cr.P.C. The appellant/accused, after adjusting the period of imprisonment already undergone, shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar (CS)

To

1. The Magistrate, Nethimandram
https://hcservices.courts.gov.in/hcservices
(Fast Track Mahila Court),
Dindigul.



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

3.The Inspector of Police,
Ayakudi Police Station, Dindigul District.

4.The Judicial Magistrate,
Palani, Dindigul District.

5.The Superintendent,
Central Prison, Madurai.

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

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12.06.2020

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