



Bail Slip

The appellant namely Logeswaran @ Ramesh S/o.Venkatachalam accused in S.C.No.105/14 on the file of the Session Mahila Court (Mahila Fast Track Court) at Erode was directed to be released on bail as per order this Court dated 24.06.2015 and made in Crl.MP.No.1/2015 in Crl.A.283/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Judgment RESERVED ON : 29.06.2021]

[Judgment PRONOUNCED ON : 30.09.2021]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.283 of 2015

Logeswaran @ RameshAppellant

.. Vs ..

State Rep.by
Deputy Superintendent of Police,
Erode Rural Sub Division
at Perundurai
Chennaiamalai Police Station,
Erode.
Crime No.91 of 2013

...Respondent

PRAYER: Petition filed under Section 374 (2) of Cr.P.C, to set aside the conviction imposed in judgment dated 22.04.2015 passed in S.C.No.105 of 2014 on the file of the Sessions Mahila Court (Mahila Fast Track Court) at Erode.

For Petitioner : Ms.Yogalakshmi
For Mr.M.Guruprasad

For Respondent : Mr.R.Vinoth Raja,
Government Advocate (Crl.Side)

JUDGMENT

The convicted accused is the appellant herein.

2. The accused is the husband of the deceased viz., Chitra. The accused originally married to a person and got one female child and he has re-married the deceased/Chitra after the death of his first wife. On the date of the marriage of



the accused with Chitra (deceased), the child born through first wife was four years old.

3. The case of the prosecution is that the accused has suffered financial loss of Rs.1,00,000/- having spent medical expenses for his first wife and in order to clear the debt accrued for the medical expenses, he had demanded a sum Rs.72,000/- from the parents of the deceased/chitra and thereby, he has committed dowry demand which amounts to pay cruelty and having not able to pay the said amount, the Chitra has committed the suicide by consuming poison.

4. During the Trial, the parents of the deceased/Chitra were examined as P.W.1 & P.W.2; brother of the deceased was examined as P.W.3; attester of the witness viz., Ravi was examined as P.W.4; Photographer, who took photos of the deceased from the place of occurrence was examined as P.W.5; RDO enquiry was conducted by P.W.6 viz., Dr.R.Sugumar and marked Ex.P3/Inquest report and Ex.P4/RDO report; the neighbours of the deceased were examined as P.W.7, P.W.8 & P.W.9, to support the case of the prosecution in connection with the demand of dowry, they have turned hostile; P.W.12 is Dr.Jaganathan, who had conducted post mortem on the autopsy of the deceased Chitra, had issued Ex.P6/Post mortem report; P.W.13 is the Deputy Director of the Forensic Science Department, who had given opinion as to the cause of the death marked Ex.P9/Forensic report and opinion expressed for the quarry raised by the police is marked as Ex.P8. Thereafter, P.W.10, P.W.11, P.W.13 are the police witnesses deposed regarding the receipt of Ex.P1/complaint and registration of FIR/Ex.P5; Observation Mahazar and alteration report were marked as Ex.P10 and Ex.P11.

5. The learned Mahila Judge, Mahila Fast Track Court, Erode has held that both the charges under Section 498(A) and 306 I.P.C were proved and accordingly laid conviction as follows:-

(i) Under Section 498(A) of I.P.C, three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for six months.

(ii) Under Section 306 of I.P.C, 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for six months.

Challenging the said conviction and sentence passed in S.C.No.105 of 2014, dated 22.04.2015, convicted accused has preferred the Criminal Appeal before this Court.

6. Ms.Yogalakshmi, represented counsel for Mr.M.Guruprasad, learned counsel for the revision petitioner would contend that the learned Sessions Judge has committed an



error in appreciating the evidence of P.W.1 to P.W.3 and wrongly caused burden of proof upon the accused and also submitted that in RDO enquiry, P.W.1 to P.W.3 could not depose regarding any demand of dowry, ought to have held that their evidence is full of contradiction and crystal with ingenuity. Even as per Ex.P9/Forensic report, no poison was detected in the internal organs (all five internal organs). Later, on explanation given in Ex.P13 & Ex.P8, the Trial Court has held that the deceased could have died due to consumption of the poison. In any absence of any positive evidence as to the cause of death, namely by poisoning, the Trial Court has committed an error in assuming that there is a case of suicide and hence, prayed for setting aside the order of conviction and sentence.

7. Mr.R.Vinoth Raja, learned Government Advocate (Crl.Side) appearing for the respondent would contend that since the deceased was living with the accused, the Trial Court has cast duty upon the husband to explain the cause of the death and the evidence of the parents and brother as to the fact that even on the date of marriage, it was informed to the parents of the deceased that there was a debt to the tune of Rs.1,00,000/- due to the medical expenses of the first wife and the Trial Court, based upon the evidence of the parents, held that since in the matter of dowry demand, except the family members, no third party could be in a position to depose regarding the same.

8. Per contra, by way of reply, the learned counsel for the revision petitioner would contend that the neighbours, who were examined as P.W.7, P.W.8 & P.W.9, have turned hostile and there is no evidence to show that there is any demand of dowry much less the demand of dowry is made to the deceased to take extreme step of suicide and furthermore, there is no positive evidence to show the cause of death viz., suicide by poisoning.

9. The point for consideration is as to (i) whether the conviction passed by the Trial Court is sustainable in law; and (ii) Whether though the sentence is excessive?

10. After hearing the learned counsel for the appellant and also the learned Government Advocate (Crl.Side).

11. The accused has charged for an offence under Sections 206 and 498 (A) of I.P.C. P.W.12 Doctor Jaganmohan who had issued Ex.P6 Post mortem Certificate and Ex.P7 has stated that the history of case finding in the postmortem are consistent with poisoning however nature of poisoning could not be ascertained. For the clarifications sought for by the Investigation Officer, it is clarified that due to delay, the nature of the poison could not be ascertained.



12. On perusal of Ex.P9 marked through P.W.13 Doctor and Ex.P9 Postmortem Certificate through Ex.P13 Doctor Balashanmugam Forensic Expert, it is stated that the 5 items namely stomach, intestine, liver, kidney and preservatives were examined and poison was not deducted in anyone of them. When the medical evidence is conclusive and established no poison was detected in the internal organs of the deceased as evidence of P.W.13 Deputy Director of the Forensic Department who had issued Ex.P9 report.

13. It appears that based upon the photographer evidence that there was a liquid near the mouth of the deceased as per the photograph. The learned Judge has come to the conclusion that the deceased Chitra, (wife of the accused) died due to the poisoning. Such a finding without any scientific basis cannot be accepted as to whether the person is died due to poisoning, which is itself not proved by the prosecution beyond reasonable doubt.

14. Based upon the clarification issued by P.W.12 Doctor, the trial Court has not even considered the answer elicited in the cross-examination as to the fact that the internal organs of the deceased does not containing any poisoning and the medical evidence neither conclusive and it is in a neutral report also assumes significance. It is not the case of the prosecution that initially she was given a stomach wash in anyone of the private hospital and hence she died due to suicide and the nature of cause of death could not be found out as per the medical records based before the sessions court.

15. The entire case of the prosecution is based upon the statement that the accused was initially married to one lady and begotten a child said to be 4 years at the time of the incident and the deceased Chitra is a second wife. The parents of the accused have gave a statement to the R.D.O that the factum of the first marriage and the death incurred by the accused towards the medical expenses of the first wife who died despite the treatment are to the extent of Rs.1 lakh and seventy five thousand rupees yet to be repaid cannot be put against them because except the said statement made to the P.W.6 R.D.O and Exs.P3 and P4. Such a statement made before the R.D.O is only in the nature of the fact that the accused was as earlier married to a lady by so name and begotten a child and 1st wife family is dead, and the same that does not amount to demand of dowry.

16. Though P.W.2 and P.W.3 could deposed that on an earlier occasion, the deceased made a complaint to the Superintendent of Police Erode for alleged demand of dowry, no document has been produced before the Court neither the copy of the complaint nor C.S.R said to have been given by the Superintendent of Police, Erode. Necessary answer has been put to examine P.W.s 1 to 3 (mother and brother) touching upon



the said fact.

17. The answer elicited during the cross examination of the investigation officer P.W.14 is to the effect that even before the solemnization of marriage between the deceased and the accused. The factum that the accused has already married and begotten child was disclosed to the marriage of the deceased namely P.W.1, P.W.2 and P.W.3 and the deceased is a second wife has also been effected and the Investigation Officer has answered the suggestion in affirmative that none of the Court witness have deposed before the R.D.O regarding alleged the demand of dowry and also stated that no such dowry demand has been spoken to by P.W.1 and P.W.4 assumes significance.

18. Furthermore, during the R.D.O enquiry P.W.6 since the deceased Chitra wanted to have a separate house which was refused by the accused husband on the ground aged person and son begotten during the first wife has also been answered in affirmative by the investigation officer. Furthermore, P.W.2 (Pushpa mother of the deceased) has not stated anything during the investigation officer regarding the alleged demand of dowry and demand of document to that effect and the evidence of P.W.3 (brother of the deceased) that the accused has attacked the deceased on the head never deposed before the investigation officer and hence, I find that the evidence of P.W.2 and P.W.3, regarding the demand of dowry and the alleged complaint said to have been given before the Superintendent of Police, Erode, was found to be at material contradiction since the same is appears to be improvement amounts to embellishment only made during recording the evidence before the Court. Such a embellishment as to the factum of alleged cruelty made to deceased, I find that such embellishment are material contradiction as to the essential features of Section 498 (A) of I.P.C.

19. Hence, I find that the version of P.W.1, P.W.2 regarding alleged dowry was never spoken to except before the Court in the witness box. The statement of those witnesses for confronted under Section 147 of the Evidence Act and answer was elicited during the cross-examination of the Investigation Officer goes to show that the alleged demand of dowry and alleged cruelty spoken to by P.W.1, P.W.2, P.W.3 is not supported by any documents and the same is made only during the examination as a witness and hence, the version of P.W.1, P.W.2 and P.W.3 is found to be unreliable. Besides their evidence and others suffers from embellishment amounting to material contradiction and thus, this Court finds that as per the documentary evidence of Ex.A9 issued by P.W.13 Deputy Director of Forensic Department, no poison was deducted on any of the internal organs and hence the neutral opinion given by P.W.12 Doctor under Ex.P7 does not advance the case of the prosecution.



20. As to prove the cause of death, the learned Session Judge has committed an error in taking into the stray answer of finding some liquid around the mouth of the deceased as per the evidence of photograph cannot be sustainable in law and hence the finding of the trial Court that the deceased Chitra died due to poison is not supported by any positive documentary evidence. Accordingly, the said finding has held to be unsustainable in law and the same shall stands vacated.

21. As stated supra, P.W.1 to P.W.3 has given evidence relating the demand of dowry Rs.72,000/- for the first time before the court and not before the R.D.O or before the P.W.14 Investigation Officer and thus their version is a clear case of exaggeration and interested to secure the conviction alone.

22. Accordingly, the version of P.W.1 P.W.2 and P.W.3 does not inspires the evidence of this Court. Infact, P.W.1 in this cross-examination has deposed that he is not aware of the content of the complaint. The suggestive case of the defence is that the deceased Chitra insisted the accused to have a separate family and the same was refused by the accused and the reasons assigned therefor as reflected Ex.P3 and P.4 R.D.O enquiry that the parents of the accused are elders and he has a child through his first wife. Furthermore, the evidence of P.W.1 to P.W.3, their other allegations whispered before the Court, was rejected for the reasons stated supra and hence the prosecution has not let in any acceptable evidence warranting the order of conviction under Section 498 (A) I.P.C and hence, I find that both the conviction and sentence by the trial Court is unsustainable in law.

23. Accordingly, this Criminal Appeal is allowed. The conviction and sentence passed by the Courts below is set aside and the revision petitioner is set at liberty and bail bond if any shall stand cancelled.

Sd/-
Assistant Registrar(CS-III)

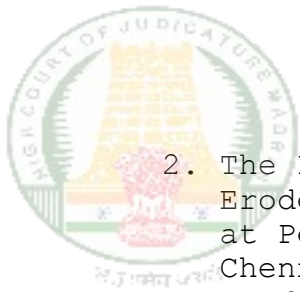
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Sub Assistant Registrar

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To

1. The Sessions Judge, Mahila Court
(Mahila Fast Track Court) at Erode.



2. The Deputy Superintendent of Police,
Erode Rural Sub Division
at Perundurai
Chennaiimalai Police Station,
Erode.

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3. The District Munsif Cum
Judicial Magistrate, Perundurai.

4. The Chief Judicial Magistrate,
Erode.

5. The Superintendent,
Central Prison, Coimbatore.

6. The Additional Sessions Judge,
Fast Track Mahila Court, Erode.

7. The Section Officer,
Criminal Section, High Court, Madras.

8. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate SR.No.50949

Crl.A.No.283 of 2015

SSI (CO)
GMY (27/10/2021)