



BAIL SLIP

The Appellant/Petitioner/Accused namely Gopal, S/o.Govindan was directed to be released on bail as per the order of this Court dated 19.11.2015 in M.P.No.1 of 2015 in CrI.A.No.687 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 07.10.2021	Date of Pronouncing Order 27.10.2021
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.687 of 2015

Gopal

.. Appellant/Accused No.1

Vs.

The State rep.by
The Inspector of Police,
Panchapalli Police Station,
Dharmapuri District.
(Crime No.77 of 2009)

.. Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374(ii) of Criminal Procedure Code, to set aside the order of conviction dated 16.10.2015 passed against the appellant in the Sessions case No.35 of 2010 on the file of the learned Sessions Judge, Fast Track Magalir Neethimandram, Dharmapuri and to set the Appellant at liberty.

For Appellant : Mr. V. Manohar
for Mr. A. Ilaya Perumal

For Respondent : Mr. S. Vinoth Kumar,
Public Prosecutor



J U D G M E N T

The matter is heard through "Video Conference".

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2. Convicted accused/A1 is the appellant herein.

3. This criminal appeal is filed against the order dated 16.10.2015 passed in S.C.No.35 of 2010 on the file of the learned Sessions Judge, Fast Track Magalir Neethimandram, Dharmapuri, convicting and sentencing the accused under Section 498(A) of IPC for a term of three years rigorous imprisonment with fine of Rs.10,000/- in default to undergo imprisonment for six months.

4. The respondent police filed charge sheet alleging that the first and second accused are brothers while third and fourth accused are the parents. The deceased (Ambika) is the wife of the first accused. The marriage between the first accused/Gopal and the deceased (Ambika) took place 1 1/2 years back from 24.06.2009.

5. Further allegation of the prosecution is that the accused have made a quarrel with the deceased (Ambika) for not giving cloths and gold ring for the first Diwali. Further, it is also alleged that the said Ambika conceived, during the 7th month and the accused has not send her to her parent house. During, 9th month of pregnancy and while going to her parents house, the first accused had compelled the deceased (Ambika) to give two bangles. Further, after birth of female child namely, Gobika, the appellant had not evinced any interest to see her child. While, Ambika, after reaching the matrimonial home, after delivery, the accused have committed cruelty by compelling the deceased (Ambika) to do all the household works and agricultural works. Due to which, on 24.06.2009, the deceased (Ambika) along with 10 months baby viz., Gobika had tied the rope over their bodies and fell into the well and committed suicide.

6. Based upon the report given by Village Administrative Officer/P.W.1, Ex.P1/FIR was registered in Crime No.77/2009, Pachapalli Police Station, Dharmapuri, under Section 174 of Cr.P.C. After investigation, Section was altered into 304(b), 306 and 498(A) of IPC. On the receipt of the report of the RDO, P.W.15/Dhanapal was examined.

7. The Village Administrative Officer/P.W.1 of Panchapalli Village was the complainant in Crime No.77 of 2009 and on further investigation, the Section was altered from 174 of Cr.P.C., to 304B, 306, 498A of IPC and the first accused who is



the appellant herein was arrested on 24.06.2009 and released on bail by the learned Principal Sessions Judge, Dharmapuri, he was under Judicial Custody of 35 days, thereafter, the investigation was completed by the respondent/complainant and charge sheet has been filed before the Judicial Magistrate, Palacode and the same has been numbered as P.R.C.No.35 of 2009 and taken on file.

8. P.R.C.No.35 of 2009 has been committed to the District Sessions Judge, Dharmapuri and the Principal Sessions Judge, Dharmapuri had made over the case to the Fast Track Mahila Court, Dharmapuri. On the basis of the final report filed by the respondent/complainant, the Fast Track Mahila Court, Dharmapuri has issued a summon to the appellant as well as the other accused namely the parents and brother of the appellant. In the Sessions case in S.C.No.35 of 2010, there are 17 witnesses has been examined and Exhibits 13 have been marked. On the basis of the final report, the learned trial Judge framed charges for the offence under Section 306, 498 of IPC.

9. During trial, in order to prove the charges of 306 and 498(A) of IPC, on the side of the prosecution, P.W.1 to P.W.17 were examined and Exs.P1 to P13 were marked.

10. In pursuance of the order dated 11.11.2014 passed by this Court in Crl.R.C.No.827 of 2010, the charge framed under Section 304-B of IPC has been deleted and original charges was restored as against the appellant herein and the other accused therein. The appellant and the other accused has pleaded not guilty and trial Court has been proceeded further in accordance with the criminal procedure code and the Evidence Act. Thereafter, altered the charges as 304B & 498A of IPC

11. On consideration of oral and documentary evidence, the learned Special Sessions Judge, Mahila Court, has held that since the accused shown hatred on the female child and reluctant to accept her back to family is amount cruelty and driven to commit suicide. (ii) However, the events leading to commit suicide does not leads to the responsibilities of accused persons. Hence, no 306 IPC made out. (iii) Since A1 was not in accommodative approach to the victim had committed the offence under Section 498(A) of IPC, however, others cannot held on as responsibilities to this offence and let off. (iv) A1 is punished for 3 years of rigorous imprisonment with a fine of Rs.10,000/-. Hence, the appeal.

12. A2, A3 and A4 are totally acquitted of all the charges and A1 is acquitted of charge under Section 306 of IPC and convicted only under Section 498(A) of IPC.

13. The learned counsel for the appellant/accused would



contend that the evidence of P.W.2, P.W.3 and P.W.4, the parents and sister of the deceased suffers from the embellishment on vital points amounting to material contradiction and draw my attention to the answer elicited in the cross examination with that of P.W.14/Investigation Officer.

14. The learned Government Advocate for the respondent would contend that the acquittal for the offence under Section 306 of IPC does not automatically lead to an acquittal under Section 498(A) of IPC. The evidence is clear and cogent as to the harassment committed by A1 on the victim girl, thereby, the wife (Ambika) along with 10 months old baby, tied the baby on the chest and thereafter, she jumped into the well and committed suicide, died due to drowning and made submissions in support of the judgment of the Sessions Judge.

15. Points for consideration:-

(a) Whether, the order of conviction passed under Section 498(A) of IPC is sustainable.

(b) Whether, the sentence awarded by the trial Court is exaggerated.

16. Before the trial Court, Ex.P1/complaint was filed by P.W.1/Village Administrative Officer and thereafter, the police based upon the information and details collected in the investigation, has filed the final report. In support of the prosecution, P.W.1/complainant has examined who is VAO. The complaint dated 24.06.2009 was lodged by P.W.1, while he was working as VAO. As per Ex.P1/complaint, while P.W.1 was incharge of the said village, on 24.06.2009, at about 12.30 am, Village Assistant, has informed him that Ambika, wife of Gopal is found to be floating on the well situated in S.No.64/1 and after he visited the site (scene of the crime) he engaged service of P.W.9 and witnessed the ferrying out of the victim and he found that the person Ambika had died along with her 10 months old baby, after tying the baby along with the chest in her Saree, thereafter, tied with the thread.

17. After registration of FIR, P.W.8/Dr.Balakrishnan, has conducted the postmortem and issued postmortem report of Ambika under Ex.P5 and postmortem report of Gopika, 10 months old baby as Ex.P6. Exs.P11, P12, P13 are the reports relating to Forensic Department and P.W.8/Doctor, has held that no poison was available in the body of the deceased Ambika and Gopika and he also stated that they have died due to drowning and marked Exs.P5 & P6 respectively. Under Ex.P5, is opined that poison was not determined in the stomach and appears to have died due to asphyxia and thus, based upon the medical evidence of P.W.8/Dr.Balakrishnan, coupled with Exs.P5 and P6 certificate, the deceased Ambika wife of the first accused and the 10 months



old baby, both died due to drowning.

18. Due to the course of the trial, P.W.2, P.W.3 and P.W.4 parents of the deceased and cousin sister were examined and another sister was examined as P.W.6. P.W.5 and P.W.7 were treated as hostile. So also P.W.9 and P.W.10, the attestor of the respective mahazar. P.W.11 to P.W.14 and P.W.16 and P.W.17, are the police witnesses, who would depose that receipt of Ex.P1/complaint from P.W.1/Village Administrative Officer and registration of Ex.P7/FIR and after completion of the investigation had filed the final report before the concern jurisdictional Magistrate.

19. The learned Sessions Judge Mahila Court in his discussion has rendered finding as stated supra.

20. Initially, charges under Section 306 & 498A of IPC have been framed against all the accused and thereafter, the matter has been posted for judgment at that stage the learned trial Court on 29.07.2010 and in exercise of the power under Section 216 of Cr.P.C., the trial Court altered the charges to the effect that the charges under Section 306 of IPC stood deleted and Section 304-B of IPC was included. As against the alteration of charges, the appellant herein has filed Crl.R.C.No.827 of 2010 before this Court and the same was allowed on 11.11.2014 and this Court was pleased to direct the trial Court to continue trial with the originally framed charges i.e., charges under Section 306 and 498-A of IPC.

21. After trial, the trial Court has acquitted all the accused including the appellant herein, in respect of charge under Section 306 of IPC and the trial Court has acquitted the accused 2 to 4 in respect of charge for the offence under Section 498A of IPC. But convicted the appellant herein for the offence under Section 498A of IPC, as stated supra. Hence, the present appeal has been preferred.

22. Hence, this appeal is now confined to the charge under Section 498A of IPC against A1 alone. P.W.15/Dhanapal, retired RDO, he has submitted inquest to the P.W.16, Pennagaram for appropriate action in Ex.P8 and he has stated that the deceased Ambika committed suicide due to the birth of the female child and the said child should not suffer in future and that is the reason she committed suicide along with the female child and further he has given evidence that the deceased Ambika committed suicide due to the act of cruelty of the accused.

23. Under Ex.P8/Inquest Report, the RDO has observed that:

... வரதட்சணை கொடுமை. பெண் சிக் வெறுப்ப, போன்றவை இந்த



இறப்பில் உள்ளதாக கருதுவதால் மேலும் விசாரணை செய்து மேல் நடவடிக்கை மேற்கொள்ள அறிவுறுத்தப்படுகிறது.

24. In other words, due to the dowry harassment and indifference attitude towards the birth of the female child, caused the wife Ambika to commit extreme step of suicide along with 10 months old baby.

25. The learned counsel for the appellant also drew my attention to the statement given by P.W.2, P.W.3, P.W.4 and P.W.6 with the cross examination of Investigation Officer to show that the version of P.W.2, and P.W.3 (parents of the deceased) and P.W.6 (sister of the deceased) suffer from improvement amounting to embellishment.

25(a). Admittedly, this nature of complaint of demand of dowry and the harassment will be known primarily to the family members. Subsequently, to the close members of the deceased person. One such person is P.W.4, she is the cousin sister of the deceased. She is also close friend of the deceased, her evidence has analysed by the Sessions Judge.

25(b). In short, comes to the conclusion that there was demand of jewels and money, in connection with maiden Diwali and thereafter, when the deceased Ambika become pregnant, in order to ascertain the sex of the fetus, as to whether, boy or girl, they have demanded Rs.5,000/- from her and he was also compelled deceased that on the result of boy or girl, from the scan report, the deceased has compelled her to obey his words and after the scan, determination of the sex of the fetus, as it was declared girl, the husband wanted to go for abortion and it was disliked by the wife/Ambika and her husband has compelled her to do agricultural job inspite of her advance stage of pregnancy.

26. P.W.4 is not only related to deceased, she is one of the close friends of the deceased. Her evidence, in short, which was fully discussed by the Sessions Judge is to the effect that during maiden Diwali, she was called upon to do certain seer, in the name of seer, demanded jewels and the cash. During her pregnancy, the deceased was compelled to undergo sex determination of the fetus and if it goes in favour of the girl baby, she has to obey the instructions given by her husband. Due to the best efforts, she saved the baby up to delivery period. It is her specific evidence that after delivery of the female baby, neither father-in-law nor mother-in-law or husband had visited to see the face of the new born till 5th month. Finally, due to such perseverance, they came only after 5 to 6 months, on condition that the parents of the deceased namely P.W.2 and P.W.3, have to maintain the new born baby and however, within, few months, unable to bear the harassment given by in-



27. During, the cross examination of P.W.4, nothing is elicited to discredit her evidence. The evidence of P.W.4 in the above aspect was not subjected to any challenge neither with P.W.4 nor with Investigation Officer, assumes significance. In short, the evidence of P.W.4 who is independent witness, close friend of the deceased have clearly deposed about the act committed by A1. During her pregnancy and immediately after the delivery of the child, she was subjected to such cruelty by his act. The first accused has not even visited the new born baby girl for more than five months, on the ground that it is a female child. Accused wanted to ascertain the sex by undergoing illegal method by prenatal examination of the fetus for determination of sex, even for that the deceased was subjected to cruelty that the medical expenses has to borne out by the father of the deceased. The evidence in this regard, by P.W.4, does not suffer from any contradiction and embellishment. As pointed out by the learned Government Advocate, her evidence is same with RDO/P.W.15 (Revenue witness).

29(a). At this juncture, it is pertinent to note that during the cross examination of prosecution witnesses, P.W.2 to P.W.7, the paternity of the child was not disputed. It is not the case of the accused that he is not the father of the child. After delivery, the attitude and behavior of the first accused clearly shows that he has treated his wife with cruelty and the entire act, as extracted supra, falls within, the explanation (a) of Section 498(A) of IPC.

30. However, on 24.06.2009, P.W.4 had categorically stated that on 24.06.2009, the face of the deceased was so sorrowful



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and he also enquired as to why she looks so sorrowful in life and furthermore, on the following noon, she was found floating in the well with the 10 months old baby, tied to her chest and has taken extreme step of self desertion, and don't want to allow her female child to suffer the same kind of treatment given, and subjected to in the hands of A1. Bearing that in mind, she had also taken her baby which was hardly 10 months old, tied her to her chest and she jumped into the well thereby, she committed suicide and hence, I find that the series of acts committed by A1 amounts to harassment and cruelty. Due to such series of acts of harassment and cruelty, she was driven to commit suicide and hence, the conviction laid by the trial Court under Section 498(A) of IPC is perfectly justifiable and does not warrant any interference of the appellate Court.

31. As stated supra, the girl under the cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education each case has to be decided on its own facts. The harassment is of such a degree deliberately making the person to get angry or irritated and by continuous act, left with no other option, except to commit suicide, in which circumstances, instigation can be inferred. The continuous course of torture created the circumstances and the deceased was left with no other option but to commit suicide. I find there is a nexus between the alleged act and actual commission of the offence. It is needless to say that the abetment to commit suicide is also an offence which falls under Section 306 and 498(A) of IPC are interrelated. The difference that lies between these two Sections is that the intention under Section 498A of IPC, and the cruelty committed by the husband to commit suicide. However, under Section 306 IPC, suicide is abetted and interrelated. The Sessions Judge has acquitted the persons for the charge under Section 306 of IPC.

32. In view of the above factual position, I hold that the offence under Section 498(A) of IPC is proved beyond reasonable doubt.

33. On the point of quantum of sentence, both the parties heard. On perusing all the materials as stated supra and also taking note of the subsequent development, I find that in lieu of the sentence of three years, it can be reduced to two years.

34. In fine, the conviction under Section 498(A) is hereby confirmed and sentence is modified and reduced from three years



to two years. The fine amount has already been paid by the appellant.

35. In the result, the criminal appeal is allowed in part to the extent indicated above.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Inspector of Police,
Panchapalli Police Station,
Dharmapuri District.
2. The Sessions Judge, Fast Track Magalir Neethimandram,
Dharmapuri.
3. The Public Prosecutor,
High Court of Madras.
4. The Section Officer,
Criminal Section,
High Court, Madras.

+2ccs to Mr.A.Ilayaperumal, Advocate, S.R.No.55545

Judgment in
Crl.A.No.687 of 2015

BR(CO)
SU(17/11/2021)