



Bail Slip

The Appellant/Accused i.e. namely Yunish, S/o.Bakurudeen was directed to be released on bail as per the order of this Court made in Crl.MP(MD).4158 of 2016 in Crl.A(MD)No.185 of 2016 dated 06/06/2016 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **14.09.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.A.(MD)No.185 of 2016

Yunish

: Appellant/Accused No.1

Vs.

The State,
Rep by Inspector of Police,
Town South Police Station,
Dindigul,
Dindigul District.
(Crime No.482 of 2011)

:Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the records relating to the conviction and sentence, dated 26.04.2016, imposed in S.C.No.31 of 2013, on the file of the learned Sessions Judge, Mahalir Neethi Mandram (FTC), Dindigul and set aside the same.

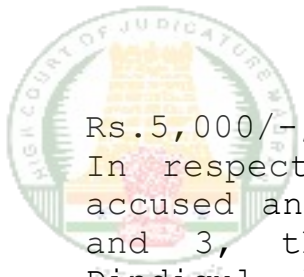
For Appellant : Mr.N.Sathish Babu

For Respondent : Mr.M.Muthumanikkam
Counsel for Government
of Tamil Nadu (Criminal Side)

JUDGMENT

This present criminal appeal is directed against the conviction and sentence dated 26.04.2016, passed in S.C.No.31 of 2013, on the file of the learned Sessions Judge, Mahalir Neethi Mandram (FTC), Dindigul.

2.The appellant herein is arrayed as first accused in the above referred case. Along with two other accused, he stood charged for the offences under Sections 498(A), 304(B) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. After full-fledged trial, the learned Sessions Judge, Mahalir Neethi Mandram, Dindigul, found the appellant/first accused guilty for the offence under Section 498(A) of I.P.C and sentenced to undergo simple imprisonment for three years and to pay a fine of



Rs.5,000/-, in default, to undergo six months simple imprisonment. In respect of other charges framed against the appellant/first accused and in respect the charges framed against accused Nos.2 and 3, the learned Sessions Judge, Mahalir Neethi Mandram, Dindigul, has acquitted them. Challenging the said conviction and sentence, the appellant/first accused is before this Court with the present Criminal Appeal.

3.For the sake of convenience, the appellant hereinafter is called as accused.

4.The case of the prosecution in brief is as follows:-

(i) The deceased Yasmin is the daughter of P.W.1. The accused is her husband. During the time of their marriage, the parents of the deceased gave 25 sovereigns of gold jewels and Rs.20,000/- as Seervarisai. After the marriage, the deceased Yasmin was residing along with her husband at Dindigul. During such time, both the second and third accused (now acquitted) were also residing with them as joint family. After some time from the date of marriage, the deceased Yasmin gave birth to one female child and thereafter, she started to suspect the accused as he is having illicit relationship with one Priya. When the same was questioned by the deceased, an unpleasant situation arose in her family. The accused came in a drunken mood, attacked the deceased. However, in the meantime, the parents of the deceased had given mobile phone and a gold ring weighing about 3/4 sovereigns to the accused. One day, when at the time PW1 celebrated the betrothal to his second daughter, the accused herein after attending the said function along with the deceased, returned to his home without attending the other formal functions. Ultimately, in the presence of PW3-Pitchai Mohamed and PW9-Hiller Mohamed and PW6-Sahul Hameed a Panchayat was held, wherein the Panchayaters advised the accused and the deceased to lead a peaceful matrimonial life.

(ii) In the meantime, on 12.06.2011 around 01.30 pm, PW1 received a message as her daughter had committed suicide and afterwards, she went to the house of the accused and after seeing the dead body of her daughter, she lodged the complaint before the police under Ex.P1. On receipt of the said complaint, PW14-Subramani, the then Special Sub Inspector of Police, Dindigul North Police Station, on 12.06.2011 around 16 hours, registered the case against the accused and others in Crime No.482 of 2011 under Section 174 of Cr.P.C. The printed FIR is marked as Ex.P3. After registration of the said FIR, he forwarded the copy of the FIR to the Revenue Divisional Officer, Dindigul and to the Deputy Superintendant of Police, Dindigul Town, for further investigation.



(iii) On receipt of the FIR, PW15-Perumal the then Revenue Divisional Officer, Dindigul, held inquest and prepared the Inquest Report under Ex.P4. He had given opinion that the deceased Yasmin committed suicide due to the harassment made by the accused. According to him, the dowry harassment is also one of the reason for committing suicide by the deceased. After completing above formalities, PW15 through PW13-Tirumalairaj sent a requisition to the Government Hospital, Dindigul, for conducting autopsy over the dead body of the deceased Yasmin.

(iv) In turn, after receipt of the requisition letter given by PW15, PW12-Dr. Jeyalalitha, on 13.06.2011, conducted autopsy over the dead body of the deceased Yasmin and issued the Postmortem Certificate under Ex.P9. During the time of postmortem, she collected the visceral particles from the dead body and sent the same for chemical examination through PW13. In turn, PW11-Janakiram, Deputy Director, Forensic Science Department, Madurai, examined the visceral particles and issued report under Ex.P2 stating that there was no poisonous substances detected in the visceral particles. After receiving the said certificate, PW12 issued a final opinion in respect of the cause of death under Ex.P10 as the deceased would appear to have died of Asphyxia due to hanging.

(v) In the meantime, after receipt of the copy of FIR from PW14, PW16-Surulirajan, the then Deputy Superintendant of Police, Dindigul Town, took up the same for investigation. On the same day, he visited the scene of occurrence and in the presence of witnesses Rahuman and Mohamed Ali, he prepared an observation mahazar under Ex.P5. He drew the rough sketch and the same was marked as Ex.P6. In the presence of same witnesses, he recovered the rope (M.O.1) under cover of mahazar Ex.P7. He examined the witnesses and recorded their statements. After concluding the investigation, he altered the Section of law from 174 of Cr.P.C to Sections 304(b), 498(A) of I.P.C and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. The alteration report was marked as Ex.P8. Ultimately, after conclusion of investigation, he came to the positive conclusion that the appellant and other two co-accused [A-2 and A-3] are all liable to be convicted under Sections 498(A) and 304(b) of I.P.C and Section 4 Tamil Nadu Prohibition of Harassment of Women Act. He filed the final report accordingly.

5. Based on the materials available on record, the trial Court framed the charges for the offences under Sections 498(A), 304(B) of I.P.C and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. All the accused denied the charges and opted for trial. Therefore, all the accused were put on trial.



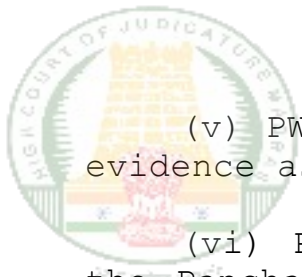
6. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, as many as 17 witnesses were examined as PW1 to PW17 and 10 documents were exhibited as Ex.P1 to Ex.P.10.

7. (i) Out of the above said witnesses, PW1-Pariskani, who is the mother of the deceased, speaks about the occurrence as after the marriage, the deceased suspected the accused as he is having illicit relationship with one Priya and while at the time the same was questioned by her daughter before the accused, the accused made harassment and assaulted the deceased. However, in view of the request made by the deceased, a gold ring weighing about $\frac{3}{4}$ sovereigns and a mobile phone worth about Rs.7,000/- were presented to the accused. Afterwards, on 12.06.2011, she received the information as her daughter committed suicide by hanging.

(ii) PW2-Mohamed Meeran, who is relative of the deceased, speaks about the occurrence as before 15 days from the date of occurrence, in respect to the dispute having by the deceased and the accused, a Panchayat was held, in which, he has also participated. He has further stated that in the Panchayat, the Panchayathars, who are all participated, requested the accused to take deceased to his work place, for which, the accused refused to take his wife to the work place, in which, he was working as labour. However, in the Panchayat, the deceased Yasmin refused to go to her mother's house and she wanted to stay in her husband house alone.

(iii) PW3-Pitchai Mohamed, who is the President of Vedapatti Pallivasal, speaks about the occurrence as during the relevant point of time, before committing suicide, the deceased Yasmin made a complaint against the accused as he had illicit relationship with one Priya. He would further state that when the same was questioned by the deceased, the accused started to harass the deceased and ultimately, the family members of the deceased, arranged the Panchayat, in which, when the attitude of the accused was questioned by the Panchayathars, the the accused replied as the same is his personal affairs. However, PW2-Mohamed Meeran made assurance in the Panchayat that there was no further problem in the family of the accused. After 15 days from the date on which the panchayat held, he received the information as the deceased had committed suicide.

(iv) PW4-Meeran is the neighbour to the accused, gave evidence in similar to that of the evidence given by PW3. However, after giving such evidence, both PW3 and PW4 were treated as hostile witnesses.



(v) PW5-Maimunabeevi, who is the sister of P.W.1, gave similar evidence as that of the evidence given by P.W.1.

(vi) PW6-Sahul Hammed, who is a Panchayatar, participated in the Panchayat held in the family of the deceased, claims that in the Panchayat, both the deceased and the accused made assurance as they wanted to compromise the issue.

(vii) PW7-Salhama, who is also a neighbour to the accused, gave evidence as, after concluding the Panchayat, the Panchayathars advised the accused and the deceased not to create any further problems. However, he had heard the news after 15 days from the date of said Panchayat as the deceased had committed suicide.

(viii) PW8 - Balkees, who is the resident of same village and PW9-Hiller Mohamed, who the relative of deceased, gave similar evidence as that of the evidence given by PW7.

(ix) PW10-Halith, who is brother of the deceased, speaks about the occurrence as on 12.06.2011 after getting information in respect of the occurrence, he went to the occurrence place and found the dead body of the Yasmin. He heard the news as, her sister was dead due to assault.

(x) PW-11-Janakiram, the then Assistant Director, Forensic Science Department, Madurai, speaks about the examination of visceral particles.

(xi) PW12-Dr.Jeyalalitha attached with Government Hospital, Dindigul, speaks about the details of postmortem conducted over the dead body.

(xii) PW13-Thirumalairaj, the then Head Constable, Dindigul South Police Station, claims that in view of the direction issued by PW15, he collected the visceral particles from the Doctor, who conducted postmortem and sent the same for chemical examination.

(xiii) PW14-Subramani and PW16-Surilirajan, who are the Police Officers, speak about the receipt of complaint, examination of witnesses and about the filing final report.

(xiv) PW15-Perumal, the then Revenue Divisional Officer, Dindigul, gave evidence as, on receipt of the First Information Report, he conducted an inquest and sent the report as, dowry harassment is also one of the reasons for committing suicide by deceased Yasmin. Further, in the said report, he has stated that due to the dispute arose between the accused and the deceased in respect of the illicit relationship having by the accused with one



8. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, they did not choose to examine any witness nor mark any document on their side.

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9. Having considered the materials placed before him and on considering the arguments advanced by the learned counsels appearing on either side, the learned Sessions Judge, Mahalir Neethi Mandram (FTC), Dindigul, came to the conclusion that the accused herein found guilty for the offence under Section 498(A) of I.P.C and sentenced him as stated in paragraph Nos.2 of this judgment.

10. Aggrieved by the said conviction and sentence, the appellant/first accused is before this Court with this appeal.

11. I have heard Mr.N.Sathish Babu, learned counsel appearing for the appellant/accused and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (crl.side) appearing for the State and also perused the records carefully.

12. The learned counsel appearing for the appellant would contend that the evidences given by the witnesses narrate the fact that before the occurrence the deceased only suspected the character of the accused as he is having illicit relationship with one Priya and created a problem. In otherwise, in the Panchayat, she wanted to stay in her husband's house only. The said situation reveals the fact that the accused herein did not commit any harassment or cruelty on the deceased and therefore, it cannot be held that the accused is guilty under Section 498(A) of IPC.

13. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent would contend that due to harassment made by the accused, the deceased went upto the level of committing suicide. Therefore, it has to be held that the ingredients, which are necessary to prove the offence under Section 498(A) of I.P.C., are all fulfilled by the prosecution and therefore, interference of this Court in the findings arrived at by the trial Court is not necessary.

14. I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record carefully.

15. Primarily, on a conjoint reading of the entire evidence given by the Panchayathars and the relative of the deceased, are

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suspected the accused as he is having illicit relationship with one Priya. At this juncture, it would be relevant to see the judgment of our Hon'ble Apex Court in **Lakshman Ram Mane Vs State of Maharashtra** reported in **(2010) 13 SCC 125**, wherein our Hon'ble Apex Court has held as follows:-

"7.We are of the opinion that an illicit relationship of a married man with another woman would clearly amount to cruelty within the meaning of Section 498-A. Even assuming for a moment that this did not amount to cruelty within the meaning of Section 498-A, it could still be used as a piece of evidence of harassment and misbehaviour of the appellant towards the deceased."

16.Applying the ratio laid down in the above referred judgment to the case on hand, it is for the prosecution to prove that the accused herein having illicit relationship with one Priya. Further, it is necessary to prove while at the time the deceased questioned about the illegal relationship of accused, the accused made cruelty or harassment. In respect of the same, though it was stated by PW1 that there was a problem arose in the family of the accused in respect of the illicit relationship of the accused, she has not stated about the cruelty or harassment committed by the accused towards her daughter. She has specifically stated in her cross-examination as, she did not know the whereabouts of Priya. Similarly, PW16 has stated in his cross-examination as, he has not enquired about whereabouts of the said Priya. Further, he had admitted that in the charge sheet filed against the accused, he did not say about the details of the said Priya and also it was admitted by the Investigation Officer as, in the complaint (Ex.P1) given by PW1, it was not stated that the accused has harassed the deceased for the purpose of getting dowry from her parents. It is the specific evidence given by the Investigation Officer as, the witnesses (P.Ws.3, 5 and 6) were not stated about the date on which the accused demanded the deceased to bring more dowry. Therefore, it is quite clear through the materials supplied by the prosecution, the illicit relationship alleged to be had by the accused with one Priya is not established. Further, the question of dowry harassment also questionable.

17.It is a general rule that to prove the offence under Section 498-A of IPC, the prosecution has to prove that a woman has been subjected to cruelty as contemplated in Clause (a) or Clause (b) of Explanation to Section 498-A of IPC. In this occasion, it would be relevant to see the said Explanation, which is extracted as follows:-

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.

Explanation:- For the purpose of this section, "cruelty" means-

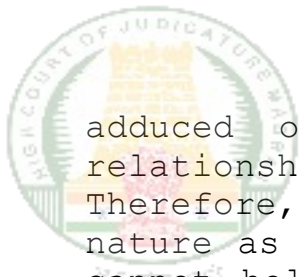
(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

18. First of all, in respect of the wilful conduct, which is of such a nature as is likely to drive the woman to commit suicide. Here it is a case, it is not in dispute that the accused is having the nature of job, wherein he has travelled regularly and attended many Offices situated outside. In this occasion, the evidence given by PW4 reveals the fact that PW1 and PW3 compelled the accused to take the deceased to the place wherever he has to travel. In otherwise, on summarizing the evidence given by PW1 and Panchayathars, they have not stated about the nature of cruelty and harassment committed by the accused. Even if the illicit relationship is proved, cruelty, as envisaged under the first limb of Section 498-A of IPC would not get attract. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. In otherwise, mere extra-marital relationship even if proved, would be illegal and immoral, but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. At this juncture, it would be relevant to see the judgment of **Pinakin Mahipatray Rawal Vs State of Gujarat** reported in **2013 (3) MLJ Cr1 700 (SC)**, wherein in the similar situation, our Hon'ble Apex Court has held as follows:-

"Mere fact that husband has developed some intimacy with another, during subsistence of marriage and failed to discharge his marital obligations, as such would not amount to cruelty but it must be of such nature as is likely to drive spouse to commit suicide to fall under Section 498-A of IPC"

19. Applying the ratio laid down in the above referred case to the case on hand, here it is a case, the evidence given by the prosecution witnesses did not show any prima facie case, as the attitude committed by the accused is likely to drive the deceased to commit suicide. In fact, in respect of the cruelty and harassment alleged by the prosecution, no evidence has been



adduced on side of the prosecution as due to the illicit relationship, the accused made harassment to the deceased. Therefore, in the absence of the wilful conduct, which is such a nature as likely to drive the woman to commit suicide, this Court cannot hold that the present case comes under Clause (a) of the Explanation to Section 498(A) of IPC.

20.In respect of the second limb, as rightly pointed out by the learned counsel appearing for the appellant that the totality of the evidence given by the prosecution witnesses would reveal the fact that there was no evidence to show that after the marriage, the accused in order to get additional dowry, made harassment to the deceased. Without any iota of evidence, this Court cannot held that the accused had harassed the deceased to meet his unlawful demand. Therefore, in this aspect also, Clause (b) of explanation to Section 498(A) of IPC, not comes into play and therefore, I am of the considered opinion that there was no material available from the evidences given by the prosecution witnesses as, the accused being the husband of the deceased, subjected the deceased to cruelty. The trial Court without appreciating the same in a proper perspective, came to the conclusion to the conclusion that the accused is guilty, which is erroneous in law.

21.In the light of the above discussions, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/first accused, by the learned Sessions Judge, Mahalir Neethi Mandram (FTC), Dindigul, in S.C.No.31 of 2013, dated 26.04.2016, is set aside and the appellant/first accused is acquitted from all the charges. The fine amount, if any, paid by him, shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar (CS)

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To:-

1.The Sessions Judge,
Mahalir Neethi Mandram (FTC),
Dindigul.



2.The Inspector of Police,
Town South Police Station,
Dindigul,
Dindigul District.

3.The Judicial Magistrate NO.III,
Dindigul.

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

5.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

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