

BAIL SLIP

Mr.Arasumani, S/o.Mookathevar, age 41 years released on bail vide Court order dated 10.01.2017 in Crl.Mp(MD).10578 of 2016 in Crl.A (MD).No.409 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.07.2021

DELIVERED ON : 23.12.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A.(MD)No.409 of 2016

Arasumani

S/o. Mookathevar

: Appellant/Accused No.1

-vs-

State represented by
The Deputy Superintendent of Police,
Usilampatti Division,
Usilampatti,
Vaalandhur Police Station,
Madurai District.
(Crime No.82 of 2007)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to call for the records relating to the judgment dated 26.09.2016 made in S.C.No.211 of 2009 on the file of the Additional District and Session Judge (Mahila), Madurai and set aside the same as illegal and allow the above appeal.

For Appellant : Mr.A.Thiruvadikumar

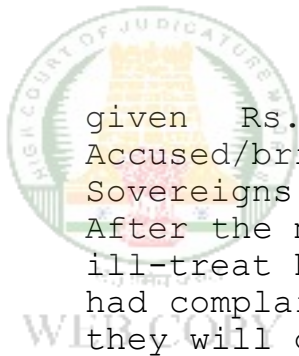
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.side)

JUDGMENT

This appeal has been filed against the judgment of conviction and order of sentence of imprisonment imposed on the accused by the learned Sessions Judge, Fast Track Mahila Court, Madurai, in S.C.No.211 of 2009, dated 26.09.2016.

2.The brief facts, which are relevant for consideration in this appeal as per the case of the Prosecution, are as follows:

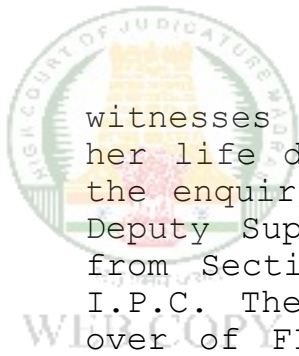
2.1.The deceased Kavitha was married to the Appellant/Accused in the year 2005 as per Hindu Rites and Customs at MPR Thirumana Mandabam, Karumathur, Madurai. It was an arranged marriage. At the time of the marriage, the bridegroom's family demanded Rs.25,000/- and 25 Sovereigns of Gold Jewels. At the time of marriage, the parents of bride viz., P.W-1-Thangaraj and P.W-2-Murugeswari had



given Rs.25,000/- as was demanded by the parents of the Accused/bridegroom and 20 Sovereigns of gold, instead of 25 Sovereigns of Gold, as was accepted by the family of the bride. After the marriage, the Appellant/Accused and his parents started to ill-treat his newly married wife. The wife of the Appellant/Accused had complained to her parents and they had consoled her stating that they will give the balance of 5 Sovereigns of gold to the family of the husband within a period of two or three months. The parents of the bride/wife of the Appellant/Accused themselves came over to the house of the in-laws seeking time for handing over 5 Sovereigns of Jewels/the balance of the accepted jewelery. At one time, the Appellant/Accused viz., the husband and his parents beat the wife of the Appellant/Accused severely and had driven her out of the matrimonial home. Therefore, the wife of the Appellant/Accused came to the house of her parents viz., P.W-1 and P.W-2. They cajoled and consoled her and after a week, they took her back to the matrimonial home and requested time to the in-laws of their daughter and stated that they will be back with five sovereigns of gold within a period of two or three months. After this incident, about six months thereafter, again the parents of the Appellant/Accused had hit the newly married wife of Appellant/Accused and driven her out of their home. Her parents held mediation talks with the elders in their Village as well as the Villagers of the matrimonial home. Based on the mediation by the elders of the two Villagers, the wife of Appellant/Accused was sent back to the matrimonial home. On 15.05.2007 by around 10.00 a.m., P.W-1-Thangaraj received message from his acquaintance in the Village of the matrimonial home of his daughter that the in-laws of his daughter had locked her in a room and set her on fire. Therefore, he rushed to the matrimonial home of his daughter along with his relatives. On reaching the matrimonial home of his daughter, he saw the burnt body of his daughter lying on the floor. Therefore, he proceeded to Valanthur Police Station and preferred a complaint under Ex.P-1. Based on the complaint under Ex.P-1, P.W-11-Sakthivel-Sub Inspector of Police, Valanthur Police Station registered FIR in Cr. No.82 of 2007 under Ex.P-8 under Section 174 of Cr.P.C. P.W-11 had sent original complaint under Ex.P-1 and the original FIR under Ex.P-8 to the Court of the Revenue Divisional Officer, Usilampatti, as the case involved the death of a newly married woman. Copies of the same were sent to the learned Judicial Magistrate and the higher Police Officials including P.W-13-Deputy Superintendent of Police, Usilampatti Sub Division.

2.2.P.W-13 had a receipt of Ex.P-8 proceeded to the house of the Appellant/Accused at Karumathur within the jurisdiction of Valanthur Police Station and conducted enquiry. He had examined the parents of the deceased and prepared Observation Mahazar under Ex.P-2 and Rough Sketch under Ex.P-11, in the presence of witnesses Ex.P-7-Kumar and Muthuraman and also conducted inquest on the body of the deceased in the presence of Panchayatdars, prepared Inquest Report

On his enquiries, he recorded the statement of



witnesses and arrived at a conclusion that the deceased had ended her life due to demand of dowry. Based on the Inquest Report and the enquiry conducted by P.W-10-Revenue Divisional Officer, P.W-13-Deputy Superintendent of Police had altered the Section of crime from Section 174 of Cr.P.C., to Section 304 (B) and 498 (A) of I.P.C. Therefore, the Investigation Officer had requested handing over of FIR to P.W-13-Deputy Superintendent of Police to conduct investigation. Accordingly, the Revenue Divisional Officer had sent the copy of the inquest report and the original FIR under Ex.P-8 and original complaint under Ex.P-1 to P.W-13-Deputy Superintendent of Police. On receipt of the FIR under Ex.P-8 and complaint under Ex.P-1, P.W-13-Deputy Superintendent of Police also visited the scene of occurrence and prepared the Rough Sketch under Ex.P-11 and Observation Mahazar under Ex.P-2, in the presence of witnesses P.W-7-Kumar and one Muthuraman. He had also seized the empty can containing smell of kerosene, burnt match stick, match box and burnt Saree under Ex.P-9 Seizure Mahazar in the presence of witnesses. He had examined the de-facto complainant-father of the deceased/newly married woman and other witnesses. He had sent requisition to the Duty Medical Officer, Rajaji Government Medical College and Hospital, Madurai to conduct autopsy on the body of the deceased and sent the body for Postmortem along with escorts. He had arrested the Appellant/Accused and sent him to the Court of the learned Judicial Magistrate along with remand request. He had received the Postmortem Certificate from P.W-9-Dr.Amuthakumar, who performed autopsy on the body of the deceased. After completion of the investigation, he laid the final report under Section 173 of Cr.P.C., in the Court of the learned Judicial Magistrate.

2.3.On receipt of the final report under Section 173 of Cr.P.C., by the learned Judicial Magistrate, Madurai, he had taken cognizance of the offences under Sections 394 (B) and 498 (A) of IPC. Since the offences are triable by the Court of Sessions, he had committed the case to the Court of the learned Principal Sessions Judge, Madurai.

2.4.On receipt of the case records in P.R.C.No.8 of 2008 from the Court of the learned Judicial Magistrate, Madurai and on appearance of the Accused, the case was made over to the Court of the learned Session's Judge, Fast Track Mahila Court, Madurai, along with records. The Accused was also bound over to the Court of Sessions Judge (Special Judge for Protection of Children from Sexual Offences Act Cases).

2.5.On appearance of the Accused, the learned Sessions Judge, Fast Track Mahila Court, Madurai, after hearing the arguments of Prosecution and defence, framed charges against the Accused under Sections 498 (A), 304 (B) of I.P.C and Section 4 of Dowry Prohibition Act. The Accused pleaded not guilty to the charges and claimed to be tried. Therefore, the trial was ordered.



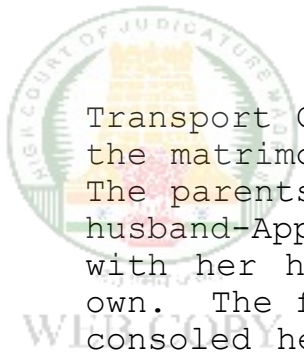
2.6.During trial, the Prosecution examined witnesses P.W-1 to P.W-13 and marked documents under Ex.P-1 to Ex.P-11 and M.O-1 to M.O-5.

2.7.After closing of the Prosecution evidence, the Accused was examined under Section 313 of Cr.P.C. The father of the Appellant/Accused died during the pendency of trial. Therefore, the case abated against the father of the Appellant/Accused. The mother of the Appellant/Accused was discharged from the proceedings by this Court. Therefore, the Appellant/First Accused is facing the charges as Sole Accused. The Appellant/First Accused had denied the incriminating evidence under Section 313 of Cr.P.C., available against him.

2.8.After hearing the arguments of Prosecution and the defence and on perusal of the materials available before the learned Sessions Judge, Fast Track Mahila Court, the learned Sessions Judge had on proper appreciation of evidence convicted the Sole Accused under Section 498 (A) of IPC and sentenced him to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo Six months Simple Imprisonment and convicted him under Section 304 (B) of IPC and sentenced him to undergo seven years Rigorous Imprisonment and convicted him under Section 4 of Dowry Prohibition Act and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months Simple Imprisonment. All the sentences were ordered to run concurrently.

3.Aggrieved by the Judgment of conviction and sentence of imprisonment by the learned Sessions Judge, Fast Track Mahila Court, Madurai vide Judgment dated 26.09.2016, the Appellant/Accused had approached this Court by filing this Appeal before this Court.

4.The argument of the learned counsel for the Appellant/Accused is that there was no dispute between him and his wife regarding dowry. The wife was born in a family having four or five siblings and they were below the poverty line. Understanding the difficulties of the family of the bride, the parents of the bridegroom viz., Appellant/Accused did not demand any dowry. It is true that the parents of the bride had spent money for the marriage. The bride was adamant in marrying only a person who is employed in Government Service. The Appellant/Accused is not at all employed in Government Service and he is a driver in a Private concern. The marriage broker had informed the parents of the bride that the Appellant/Accused was employed in Government Transport Corporation and believing the words of the broker, the deceased consented for the marriage. The parents of the bride knew that the bridegroom was not employed in Government Transport Corporation. However, they wanted to get their daughter married to him and proceeded with the marriage believing that after marriage, she will realise the life and adjust on her own terms. Further, even though after marriage



Transport Corporation, she picked up quarrel often and she had left the matrimonial home on her own and returned to her parents' house. The parents of the bride had cajoled her and re-united her with her husband-Appellant/Accused. Even thereafter, she picked up quarrel with her husband and in-laws and left the matrimonial home on her own. The fact was known to the parents of the deceased and they had consoled her stating that she has to adapt to the condition of the real life considering the poverty in the family and the needs of her younger sisters to be married off. So saying the parents of the deceased always re-united the daughter with her son-in-law. Not only that, the Appellant/Accused and the deceased did not have any children. Hence, the relatives used to warn her regarding pregnancy. Therefore, disappointed and annoyed by the same, she had committed self-immolation when her husband had gone out to work. The parents of her husband were also away from home leaving her to take care of the home. Under those circumstances, she had committed self-immolation for which the parents of the deceased had cooked up a story as though the husband and in-laws had tortured her resulting in her committing self-immolation.

5.The defence of the Appellant/Accused was available in the cross-examination of the parents of the deceased P.W-1 and P.W-2. They had in their cross-examination admitted indirectly to the suggestion of the learned counsel for the Appellant/Accused. Almost all the witnesses produced by the Prosecution had admitted to the cross-examination regarding the defence of the Appellant/Accused. The learned Sessions Judge, Fast Track Mahila Court, Madurai, had ignored those facts while assessing the evidence and had convicted the Appellant/Accused as though the Appellant/Accused committed heinous crime of dowry harassment and dowry death. Therefore, the Judgment of conviction passed by the learned Sessions Judge, Fast Track Mahila Court, Madurai, is perverse and is to be set aside warranting interference by this Court.

6.The learned Government Advocate (Crl. Side) had replied to the arguments of the learned counsel for the Appellant/Accused. The learned Government Advocate (Crl. Side) submits that the appeal has no merits as all the Prosecution witnesses stood by the Prosecution. The Prosecution had proved its case beyond reasonable doubt. The learned Sessions Judge, Fast Track Mahila Court, Madurai, had properly assessed the evidence and had discussed the evidence in the judgment in Paragraph Nos.12 to 19. Therefore, the arguments of the learned counsel for the Appellant/Accused is to be rejected and the Judgment of the learned trial Judge, Fast Track Mahila Court, Madurai, is to be upheld. The appeal lacks merits and is to be dismissed.

7.Point for Consideration:

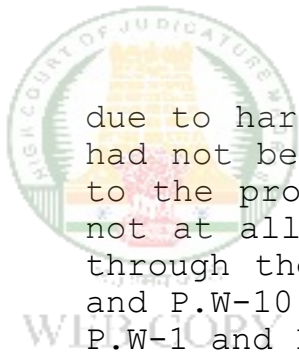
Whether the Judgment of Conviction passed by the learned Sessions Judge, Fast Track Mahila Court, Madurai in



S.C.No.211 of 2009, dated 26.09.2016 is perverse warranting interference by this Court?

8.Hearing the arguments of Mr.A.Thiruvadi Kumar, learned Counsel for the Appellant/Accused and Thiru.T.Senthil Kumar, learned Government Advocate (Crl. Side) for the prosecution and perused the evidence of the prosecution witnesses P.W-1 to P.W-13 and Ex.P-1 to Ex.P-11.

9.On perusal of evidence of P.W-1 and P.W-2 - the parents of the deceased, P.W-10-District Revenue Officer who had conducted the inquest as well as Magisterial Enquiry as per the provisions of Dowry Prohibition Act regarding death of newly married woman within seven years from the date of marriage, it is found that the valuable defence available to the Appellant/Accused was almost accepted by them in their cross-examination. P.W-2 mother of the deceased accepted that she used to sell Dosa on the street for her livelihood. P.W-1-father of the deceased and the husband of P.W-2 also admitted the same. P.W-1 is running a petty shop for livelihood. Both of them viz., P.W-1 and P.W-2 admit that the accused belongs to a well-to-do family and they could have arranged marriage with a bride from better well-to-do family. However, they had accepted the proposal from P.W-1 and P.W-2 and as per the custom in their Piramalai Kallar community, the marriage expenses are met by the bridegroom's family and they had spent the same. Knowing fully well that the financial position of P.W-1 and P.W-2, they had accepted the marriage proposal as they wanted to get their son married to outside the relatives. The Appellant/Accused was employed in a private work and not in Government service, as a driver, the deceased woman was adamant that she will marry only a person in Government job. But the same was hidden from the bride by her own parents viz., P.W-1 and P.W-2. Further, even after 2½ years of marriage, the accused and the deceased do not have child. Therefore, the deceased was suffering from depression. Added to that, the wife of the younger brother of the Appellant/Accused, who was married one year later that is after the marriage of the Appellant/Accused, delivered a child. Therefore, the daughter of P.W-1 and P.W-2 and the wife of the Appellant/Accused suffered depression which resulted in her committing self-immolation. P.W-10-District Revenue Officer had in his cross-examination admitted that since it is a death within seven years of the marriage, he had arrived at a conclusion that the deceased had committed self-immolation due to dowry harassment. The evidence of District Revenue Officer has much weightage before the Court of law. The fact that the deceased Kavitha was undergoing treatment for pregnancy related issues was admitted in cross-examination by P.W-10-District Revenue Officer that the same was informed to him by the witnesses whom he had examined. Also, it is stated by P.W-10-District Revenue Officer that the Appellant/Accused had married the deceased person only the fact that he is impotent. Therefore, the claim of the prosecution that the deceased committed self-immolation

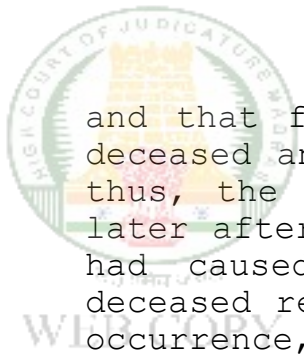


due to harassment and torture at the hands of the in-laws for dowry had not been established. Not only that, the presumption available to the prosecution under Section 113 of the Indian Evidence Act is not at all applicable. In the circumstances of the case available through the evidence is in the cross-examination of P.W-1 and P.W-2 and P.W-10. The important witnesses are the parents of the deceased P.W-1 and P.W-2. In their exhaustive cross-examination, the defence of the accused is almost admitted. P.W-1-father of the deceased is employed in a tea shop and P.W-2 -mother of the deceased was selling idlies and dosas on the road side. When that is the social condition of the parents of the deceased, the deceased having been married to a person who was not in Government job and who was employed in private company as a driver and hiding those facts, the parents of the deceased conducted the marriage with the accused gave rise to disappointment in the minds of the young woman of marriageable age. Added to that, the helplessness for having not delivered a child, and when the wife of the younger brother of the Appellant/Accused who was married one year later than the Appellant/Accused had delivered a child.

10. Under those circumstances, the learned trial Judge failed to assess the evidence that was available before the trial Court in the exhaustive cross-examination of P.W-1, P.W-2 and P.W-10, which are important witnesses regarding the charges of dowry harassment framed against the Appellant/Accused in this case.

11. It is accepted principle during any criminal trial that the valuable defence of the accused if available in evidence probablises the valuable defence of the accused creates a dent in the prosecution case so as to cause a reasonable doubt that will weigh in favour of the accused. In this case, the exhaustive cross-examination of P.W-1 and P.W-2 - parents of the deceased and P.W-10- Revenue Divisional Officer, Usilampatti who held Magisterial enquiry which is mandatory under the Dowry Prohibition Act is sufficient to accept the valuable defence of the Accused.

12. When the parents of the deceased woman was from lower strata of society, where they are earning their livelihood as employed in Tea shop as well as selling idlies and dosas on the street. The claim of P.W-1 and P.W-2 that their daughter committed self-immolation due to the dowry harassment meted out by the accused and his parents who belong to well-to-do family, does not gain acceptance if weighed in the light of any normal human conduct. Added to that, the circumstances that the accused had suppressed the fact that he is impotent and that is why he did not claim dowry and wanted to marry a woman from outside the relatives which is not a practice in Piramalai Kallar community, which opportunity was utilized by the parents of the deceased as they have three daughters and struggling for getting their daughters married. There is evidence that the deceased at the time of marriage proposal had insisted her parents that she will marry only a person employed in Government whereas the accused herein was not a Government servant



and that fact was suppressed by her parents. Added to that, the deceased and the accused did not beget a child. When things stood thus, the younger brother of the accused who was married one year later after the marriage of the accused had begotten a child. This had caused disappointment and depression in the minds of the deceased resulting in her committing self-immolation. Prior to the occurrence, within a period of 2 ½ years, they lived as husband and wife. There was no police complaint or CSR registered in the police station regarding dowry harassment or the conduct of mediation either by the police or by elders in the society. Therefore, in the absence of any such incriminating materials, merely, the newly married girl committed self-immolation within a period of seven years from the date of marriage even though attracts presumption to register a case under the Dowry Prohibition Act, that will not be sufficient to convict the accused. The trial Judge has the duty to assess the evidence available before the trial Court from the cross examination of the witnesses which is a valuable defence in favour of the accused and that had been lost sight of, by the learned trial Judge and had convicted the accused which had caused miscarriage of justice to the accused. Therefore, the same is treated as perverse by this Court warranting interference to set right the wrong committed on the accused by the learned trial Judge.

13. In the light of the above discussion, the point for consideration is answered in favour of the Appellant/Accused and against the Respondent/Prosecution. The Judgment of Conviction and sentence of imprisonment imposed on the accused by the learned Sessions Judge, Fast Track Mahila Court, Madurai, in S.C.No.211 of 2009, dated 26.09.2016, is perverse warranting interference by this Court.

In the result, this Criminal Appeal is allowed.

The Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Madurai District in S.C.No.211 of 2009 dated 26.09.2016 is set aside. The bail bond executed by the appellant, if any, shall stand discharged. Fine amount, if any paid, shall be refunded to the appellant.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar (CS)

dh/srm

To
<https://hcservices.ecourts.gov.in/hcservices/>



- 1.The Additional District and Session Judge (Mahila),
Madurai.
- 2.The Sessions Judge/Mahila Court/Mahalir Neethimandrasm,
Madurai.
- 3.Do throguh the Principal District and sessions Judge, Madurai.
- 4.The Deputy Superintendent of Police,
Usilampatti Division,
Usilamapatti,
Vaalandhur Police Station,
Madurai District.
- 5.The Superintendent, Central Prison,
Madurai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer,
Criminal Section ,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.VEILMUTHU, Advocate (SR-40359[F] dated 23/12/2021)

CRL.A. (MD) No.409 of 2016
23.12.2021

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