



BAIL SLIP

The Petitioner/Accused namely Elumalai male aged 25 years S/o.Jayabalan was directed to be released on Bail vide order dated 06.11.2014 made in MP.1 of 2014 in Crl.A.No.565 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

ORDERS RESERVED ON 30.03.2022	ORDERS PRONOUNCED ON 08.04.2022
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CRL.A.NO.565 OF 2014

Elumalai

... Appellant

Vs.

State by
Inspector of Police,
Meenambakkam Police Station,
Chennai - 600 027.
[Crime No.5 of 2010]

... Respondent

PRAYER:

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment and conviction passed in S.C.No.115 of 2011 dated 07.10.2014 by the learned Mahila Sessions Judge, Chengalpet.

For Appellant : Mr.N.Baskaran

For Respondent : Mr.R.Kishore Kumar
Government Advocate

JUDGMENT

The appellant/accused in S.C.No.115 of 2011 convicted by the Trial Court for the offence under Section 498A, sentencing him



to undergo one year rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo two months rigorous imprisonment filed this appeal.

2. On the complaint of P.W.1, mother of the deceased Rajalakshmi, a case came to be filed initially under Section 174 Cr.P.C., later altered to offence under Sections 498A and 304B IPC. The gist of the complaint is that on 14.10.2009, the appellant and the said Rajalakshmi got married against the wish of her parents, after marriage she was residing with the appellant at Kulathumedu, Meenambakkam. The appellant and his mother were constantly harassing her by demanding dowry and assaulted her. On 12.02.2010, at about 1.00 p.m., the appellant assaulted the said Rajalakshmi, due to which she fell down unconsciously and thereafter, she was taken to the hospital, where she was declared brought dead. On receipt of information, P.W.1 rushed to the hospital where she found her daughter dead and hence, lodged a complaint. P.W.9 on receipt of the complaint, registered a FIR. Since the death took place within seven years of marriage, P.W.9 forwarded the FIR to P.W.10, Revenue Divisional Officer, Tambaram, who conducted inquest and sent a report confirming that the death was under suspicious circumstances and there was demand of dowry. P.W.11, Assistant Commissioner of Police took up investigation, examined the witnesses and collected documents. P.W.8, Post-mortem Doctor found external injuries and issued Post-mortem certificate/Ex.P4. On completion of investigation, charge sheet filed, the Trial Court framed charges under Sections 498A, 302 and 304B IPC.

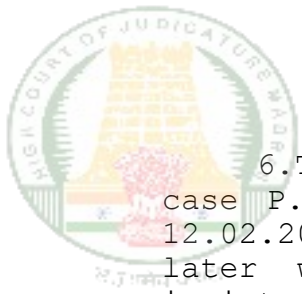
3. During trial, P.W.1 to P.W.11 were examined, Ex.P1 to Ex.P13 and M.O.1 to M.O3 were marked. On the side of defence, no witnesses were examined and no documents marked. On conclusion of the trial, the Trial Court acquitted the appellant/A1 for the offences under Sections 302 and 304B IPC and convicted him under Section 498A IPC. As regards the second accused/the appellant's mother, she was acquitted of all charges.

4. The contention of the appellant is that in this case P.W.1 and P.W.2 are the mother and brother of the deceased Rajalakshmi, both of them admit that the appellant used to visit his brother's house near P.W.1's house, at that time, there developed a relationship between the appellant and the said Rajalakshmi, sometimes later both of them eloped, complaint was lodged before the Pallavaram Police Station, at that time, Rajalakshmi along with the appellant appeared before the Police and informed that she wanted to live with the appellant which was not acceptable to her family. She went along with the appellant and thereafter, there was no contact with her family members. It is further submitted that on 12.02.2010, at about



7.00 p.m., P.W.1 received information that her daughter was taken to hospital and she is dead. P.W.1 suspect that her daughter had been done to death and hence, lodged a complaint. The respondent police registered a FIR, conducted enquiry, both P.W.1 and P.W.3 categorically stated that after marriage, they have no contact with the deceased Rajalakshmi which they confirmed before the RDO/P.W.10 as well as before the Trial Court. It is further submitted that the other witnesses in this case, namely, P.W.3 to P.W.7 who are the neighbours, not supported the case of the prosecution. P.W.7 is the witness for observation mahazar and rough sketch.

5. It is further submitted that the specific case of the appellant is that the deceased was suffering from epilepsy, due to which she fell down unconsciously, immediately the appellant rushed to the nearby shop, fetched her juice, since she did not revive, the appellant sought the help of the neighbours, took her to hospital in an auto, thereafter shifted her to Ambulance, she was taken to Government Hospital where she was declared brought dead. It is further submitted that in the RDO enquiry, the appellant, his parents as well as mother and brother of the deceased Rajalakshmi were examined. Further, A2/mother of the appellant/A1 fairly given a statement that at times there would be quarrel between the appellant and the deceased Rajalakshmi which is a normal family quarrel. The RDO/P.W.10 in her report/Ex.P8 without any material, given a finding as though there was dowry demand and she was subjected to cruelty. Further, the Postmortem Doctor/P.W.8 in her opinion stated that injuries are not significant to give accurate opinion and no definite opinion could be given as to the cause of death. The Investigating Officer admits that none of the neighbours were examined by the RDO during the inquest and further admits that the Doctor gave an opinion that laceration injuries found is not the reason for her death. In view of the same, the Trial Court, finding that there is no evidence and material for the demand of dowry as well as the appellant being the cause for the death of the deceased acquitted him of all charges but convicted him under Section 498(A) IPC for subjecting her to cruelty only on the submission of his mother/A2, while she was examined by RDO, she states that, at times there would be some quarrel between the appellant and the deceased Rajalakshmi which is a usual one. Further, none of the neighbours or any other witnesses have stated about the cruelty. It is further submitted that only P.W.1 and P.W.2, mother and brother of the deceased Rajalakshmi allege that the appellant could be the cause for the death but after the marriage, they were not in talking terms with the deceased Rajalakshmi and never visited her. Hence, he prayed for acquittal.



6. The learned Government Advocate submitted that in this case P.W.1 is the mother of the victim, four months prior to 12.02.2010, the victim Rajalakshmi eloped with the appellant, later when she appeared before the Pallavaram Police, she insisted that she wanted to live with the appellant and after marriage, the appellant and the victim Rajalakshmi were residing as husband and wife in their hut along with appellant's mother. It is further submitted that there have been frequent quarrel between them which is normal. On 12.02.2010 at about 1.00 p.m. there was a quarrel between them, the appellant slapped the victim, later he found her in unconscious state, he went to the shop fetched her juice, since she failed to respond the appellant immediately took her to hospital in an auto, later shifted her to a Ambulance and took her to Government Hospital where she was declared brought dead. It is further submitted that during the short spell of marriage life, the victim was constantly harassed, there have been demand of dowry and on the complaint of P.W.1, FIR/Ex.P6 was registered by P.W.9 and finding that the death occurred within seven years of marriage, the complaint was forwarded to RDO/P.W.10, who conducted inquest and examined the appellant, his parents, P.W.1 and P.W.2. In his report/Ex.P7, the RDO gave a finding that the appellant used to beat Rajalakshmi and nobody questioned the same. Further, the appellant's mother/A2 gave a statement that there was frequent quarrel and her son used to beat her often. P.W.8/Post-mortem Doctor in her report/Ex.P4 found curvilinear abrasion below the middle of the right lower jaw, contusions in the left side of the chest below the medial end of left cervical and in the brain diffused cerebral edema seen. After getting the postmortem certificate, case was altered from Section 174 Cr.P.C. to Sections 498(A) and 304(b) IPC and the alteration report is marked as Ex.P12. The observation mahazar/Ex.P9 and rough sketch/Ex.P10 were prepared and M.O.1 to M.O.3 found in the scene of occurrence were seized through Ex.P11. Thereafter, on conclusion of investigation charge sheet filed before the Trial Court, except P.W.1 and P.W.2, all other witnesses, namely, P.W.3 to P.W.7 not supported the case of the prosecution and turned hostile. The Trial Court based on the evidence and materials, finding no reason given for the injuries found and during RDO enquiry the appellant's mother/A2 admit about the appellant assaulting the victim often, acquitted the appellant for the offence under Section 304B IPC and convicted him for the offence under Section 498A IPC. He further submitted that the death occurred inside the house of the appellant and no reason given by the appellant except for formal denial when he was examined under Section 313 Cr.P.C. However, he fairly submits that the prosecution has not filed any appeal against the acquitted charges. He further submits that the finding of the Trial Court is proper and hence, he prayed for dismissal of the appeal.



7. Considering the submissions made and on perusal of the materials placed on record, it is seen that the appellant was with the victim throughout and he is the person who took her to the hospital. Further, from the observation mahazar and the material objects seized from the scene of occurrence, it is seen that juice packet was found near the mat and none of the neighbours stated anything about the victim being subjected to dowry harassment and cruelty. The Toxicology report confirms that no poisonous substance was detected, the Postmortem Doctor given a report that no definite opinion could be given as to the cause of death. From the postmortem report, it is seen that there is curvilinear abrasion below the middle of the right lower jaw, contusions in the left side of the chest below the medial end of left cervical and in the brain diffused cerebral edema seen. The defence of the appellant is that the deceased Rajalakshmi had epilepsy, due to which she fell down, sustained injury and became unconscious. P.W.1 and P.W.2 not denied about the victim being affected by epilepsy. Further, after the marriage between the appellant and the deceased Rajalakshmi, P.W.1 and P.W.2 was not in talking terms with the deceased and never visited her. It is further seen that the appellant merely denied and not given any reason for the said Rajalakshmi's sudden death inside the house. As per the RDO report, it is found that the deceased Rajalakshmi was beaten and there was fight between the appellant and the deceased regularly. Hence, the Trial Court gave a finding that the deceased Rajalakshmi was subjected to harassment at the hands of the appellant and convicted the appellant under Section 498(A) IPC. Therefore, this Court does not find any infirmity in the order passed by the Trial Court.

8. Since the occurrence took place in the year 2010, it is almost 12 years now, the appellant is a daily coolie, he has to take care of his aged mother and the appellant had already undergone incarceration period from 23.03.2010 to 03.05.2010, this Court is inclined to reduce the sentence imposed by the Trial Court from one year rigorous imprisonment to that of the period of incarceration already undergone by the appellant.

9. In the result, the Criminal Appeal stands partly allowed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Judicial Magistrate,
Alandur Chennai.
- 2 The Chief Judicial Magistrate,
Chengalpet.
- 3 The Inspector of Police,
Meenambakkam Police Station,
Chennai - 600 027.
- 4 The Mahila Sessions Judge,
Chengalpet.
- 5 The Public Prosecutor,
High Court, Madras.

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Crl.A.No.565 of 2014

MT (CO)
PM/20/04/2022