

BAIL SLIP

The Petitioners/Accused namely (1) Venkatesan, (2) chinnayan, (3) Nagammal, (4) Marimuthu, (5) Selvaraj, (6) Muthulakshmi, were directed to be released on bail made in Crl MP No.1/2008, dated 28.3.2008, in CRL RC. No.458/2008, on the file of the High court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2010

CORAM

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Crl.R.C.No.458 of 2008

1.Venkatesan  
2.Chinnayan  
3.Nagammal  
4.Marimuthu  
5.Selvaraj  
6.Muthulakshmi

... Petitioners

Vs

The State  
Represented by Inspector of Police  
All Women Police Station  
Villupuram  
Cr.No.10/2001

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of Cr.P.C. to call for the records relating to the judgment of conviction and sentence passed by the learned Principal Sessions Judge, Villupuram in Crl.A.No.42/2007 dated 24.03.2008 confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate No.2, Villupuram in C.C.No.289/2001 dated 10.10.2007 and set aside the same.

For Petitioners: Mr.R.Shanmugavelayutham,  
Sr. Counsel  
for Durai Gunasekaran

For Respondent : Mr.I.Paul Nobel Devakumar  
Govt. Advocate (Crl.Side)

O R D E R

This criminal revision case is directed against the judgment of the learned Principal Sessions Judge, Villupuram dated 24.03.2008 made in C.A.No.42/2007 on the file of the Sessions Court, Villupuram. By the said judgment, the learned Principal

Sessions Judge, Villupuram has confirmed the conviction of the petitioners herein by the trial judge, namely the learned Judicial Magistrate No.2, Villupuram in C.C.No.289/2001 for offences punishable under Section 498-A IPC and Section 4 of the Dowry Prohibition Act.

2. In a case registered as Cr.No.10/2001 on the file of the All Women Police Station, Villupuram, after investigation, the Inspector of Police of the said police station submitted a final report alleging commission of offences punishable under Sections 498-A IPC and Section 4 of the Dowry Prohibition Act. The same was taken on file by the learned Judicial Magistrate No.2, Villupuram as C.C.No.289/2001. However, the learned Judicial Magistrate No.2, Villupuram, framed charges not only for the offences punishable under the above said provisions, but also for offences punishable under Sections 406 of IPC and Section 6 of Dowry Prohibition Act. As the petitioners/accused denied the charges and pleaded not guilty, the case was tried and in the trial 10 witnesses were examined as P.W.1 to P.W.10 and four documents were marked as Ex.P1 to Ex.P4 on the side of the prosecution. When the accused/petitioners were questioned under Section 313(1)(b) of Cr.P.C regarding the incriminating materials available against them in the evidence adduced on the side of the prosecution, they denied them to be false and reiterated their stand that they were innocent and not guilty. No witness was examined, but two documents were marked as Ex.D1 and Ex.D2, on the side of the accused.

3. The learned Judicial Magistrate No.2, Villupuram, after considering the evidence, found all the petitioners herein/accused 1 to 6 guilty of the offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act alone. In respect of the other charges, they were found not guilty. The petitioners were sentenced to undergo six months rigorous imprisonment and to pay a fine of Rs.250/- by each one of them with a default sentence of one month simple imprisonment in case of default in payment of fine.

4. As against the said conviction and sentence, the petitioners preferred an appeal before the learned Principal Sessions Judge, Villupuram in C.A.No.42/2007 and the same was dismissed after hearing both sides confirming the conviction and sentence. That is why the petitioners/accused 1 to 6 have come forward with the present revision case.

5. The arguments advanced by Mr.R.Shanmugavelayutham, learned senior counsel representing the counsel on record for the petitioners and that of Mr.I.Paul Nobel Devakumar, learned Government Advocate (Crl.Side) representing the respondent were heard. The materials available on record were also perused.

6. It is the contention of the learned senior counsel for the petitioners that though the courts below have concurrently found the petitioners/accused 1 to 6 to be guilty of the offences punishable under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, the said finding is not based on proper

appreciation of evidence; that the finding of the courts below can be even stated to be perverse and that the courts below have failed to see that the prosecution miserably failed in bringing the guilt of the accused to hilt beyond any reasonable doubt. It is the further contention of the learned senior counsel that many material contradictions and improbabilities escaped the notice of the courts below and that had they been properly considered, the courts below ought to have come to the conclusion that the prosecution had not proved its case beyond reasonable doubt, even in respect of the charges for offences punishable under Sections 498-A IPC and Section 4 of Dowry Prohibition Act.

7. On the other hand, the learned Government Advocate (Crl.Side) representing the respondent would contend that this court being a Revisional Court, should not ordinarily try to re-appraise the evidence and that the concurrent findings of the courts below cannot be termed defective or infirm, much less perverse and that the present Revision Case should be dismissed as having no merit in it. This court paid its anxious considerations to the submissions made on either side and also to the materials available on record.

8. Though the Investigating Officer had chosen to submit a final report alleging commission of offences punishable under Sections 498-A IPC and Section 4 of Dowry Prohibition Act alone, the trial court chose to add two more charges i.e. charges for offences punishable under Section 406 IPC and Section 6 of the Dowry Prohibition Act. However, at the conclusion of trial, the trial court found that no offence either under Section 406 IPC or under Section 6 of Dowry Prohibition Act was made out and hence the petitioners herein/accused were not guilty of any one of those offences. In the light of the said fact that the charges framed for the additional offences, which are not found in the final report resulted in the finding of the trial court that the petitioners were not guilty of those offences, the conviction recorded for the offences under Section 498-A IPC and for the offence under Section 4 of the Dowry Prohibition Act by the trial court, which stand confirmed by the appellate court is to be considered.

9. The main ground, on which the finding of the courts below holding the petitioners guilty of the above said offences (offences under section 498-A and section 4 of the Dowry Prohibition Act) are that the courts below failed to consider the salutary principle of criminal jurisprudence that a person accused of an offence cannot be punished unless the charge made against him is proved by the prosecution beyond reasonable doubt, with the exception that the statute may provide for presumption against the accused in certain circumstances. The crux of the contention of the petitioners is that the evidence adduced on the side of the prosecution are marred by the in-built contradictions found therein and that the contradictions elicited from the prosecution witnesses, if considered in proper perspective, would have led to the only conclusion that the prosecution failed to prove its case beyond

reasonable doubt in respect of the offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act also; that reasonable doubts have arisen regarding the prosecution case and that the petitioners/accused should have been acquitted of the said offences also.

10. In support of the above said contention, the learned senior counsel for the petitioners, has pointed out various contradictions found in the evidence of the de-facto complainant, who is none other than the wife of the first petitioner. Admittedly, the marriage of the first petitioner with P.W.1 took place on 11.07.1997. The wedding card printed and distributed for the said marriage has been marked as Ex.P1. The learned Senior Counsel also pointed out the following contradictions found in the evidence of P.W.1 in chief examination itself. At the first instance, she has stated that at the time of her marriage, as per the request made by the members of her husband's family, she was provided with 15 sovereigns of gold jewels and "seers" to the value of Rs.50,000/-. It is also her evidence that her parents made a payment of a sum of Rs.3,000/- for purchasing dress materials to the first petitioner. It is the further evidence of P.W.1 that since the first petitioner, who was employed in a private school at the time of betrothal, got a job in a government school as teacher, the petitioners made a demand for 10 more sovereigns of gold jewels, Rs.10,000/- cash and a Hero Honda motorcycle, over and above the 15 sovereigns of gold jewels and the "seers" agreed to be given at the time of betrothal. It is her further evidence that her father expressed his inability to meet with the said further demand made and that at the intervention of panchayatdars, the marriage took place without the said further demand being complied with. It is also her evidence that subsequent to the marriage she was teased and humiliated pointing out the fact that her parents were not able to give the additional dowry demanded by the petitioners/accused 1 to 6. However, during cross-examination, she has stated that she did not remember the date on which the said demand for 10 sovereigns of gold jewels, Rs.10,000/- cash and Hero Honda motorcycle was made.

11. P.W.2 is the father of P.W.1. He would say that, at the time of betrothal he agreed to provide his daughter (P.W.1) with 15 sovereigns of gold jewels and "seers" to the value of Rs.60,000/-. In this regard there is a difference between the evidence of P.W.1 and P.W.2. According to P.W.1, the agreement was to provide seers to the value of Rs.50,000/-, whereas according to P.W.2, the value of such seers agreed to be given was Rs.60,000/-. Though P.W.2 also would state that the demand for 10 more sovereigns of gold jewels and Rs.10,000/- cash and also a Hero Honda motorcycle was made subsequent to the betrothal on the premise that the first petitioner had secured a job as teacher in the government school, it is his further evidence that he did not agree for the same and refused to heed to the demand made by the petitioners/accused. P.W.1 does not say that either a Hero Honda motorcycle or any other motorcycle was purchased by her father and given to the first petitioner. On the other hand, P.W.2 would say that, at the time

of 'seemantham' function, he purchased a TVS Champ two wheeler and presented it to the first petitioner. P.W.3 is a relative of accused persons as well as P.Ws.1 and 2. She is also the wife of P.W.9. P.W.3 would say that at the time of 'seemantham', P.W.1's parents bought a Hero Honda motorcycle and presented it to the first petitioner/accused. In this regard there is material contradiction between the evidence of P.Ws.2 and 3 as to what type of vehicle was presented at the time of 'seemantham'.

12. P.W.4 is projected as an independent witness to prove the alleged demand of dowry and harassment. But he has been successfully contradicted with reference to his earlier statement made while he was examined as a witness in the maintenance case M.C.No.21/2001. The relevant portion of the said deposition has been marked as Ex.D2. Though P.W.5 seems to corroborate the evidence of P.Ws.1 and 2 regarding the demand of enhanced dowry after the first petitioner was able to secure a government job, she has also made an admission during cross-examination that she did not have any personal knowledge of what transpired between P.W.1 and accused. There is also an admission on her part that she did not know the fifth petitioner.

13. P.W.6 has also attempted to corroborate P.W.1 and 2 in respect of the alleged demand and the presentation of a TVS Champ at the time of valaikattu. But during cross-examination, he would state that he did not know the date on which the demand for 10 sovereigns of jewels and a Hero Honda motorcycle as additional dowry was made. P.W.7, who is said to have arranged the marriage of the first petitioner with P.W.1 has given an entirely different version. During cross-examination he has stated that, 16 sovereigns of gold jewels and a big vehicle (referring to Hero Honda motorcycle) was demanded at the time of valaikattu. P.W.8's evidence is yet another version different from the evidence of the other witnesses. It is his evidence that at the time of marriage itself, P.W.1's parents gave a TVS 50 vehicle. P.W.9's evidence is also different from that of the other witnesses. It is his evidence that the petitioners demanded 20 sovereigns of gold jewels at the time of betrothal itself, whereas, it is the evidence of P.Ws.1 and 2 that after betrothal, first petitioner got government job and hence the petitioners/accused demanded 10 more sovereigns of gold jewels and a Hero Honda motorcycle besides a cash of Rs.10,000/-. He has also admitted that there was some dispute between himself and the first petitioner herein.

14. There is no evidence adduced on the side of the prosecution regarding the registration number of the motorcycle, either it be a TVS 50 or a TVS Champ or a Hero Honda motorcycle. From which dealer the motorcycle was purchased, has not been stated by any one of the witnesses. Bill for the purchase of the vehicle has also not been produced. Not even a piece of paper to show that the first petitioner was having such a motorcycle during the relevant period was produced by the prosecution. If the above said contradictions are considered in proper perspective, the evidence of the prosecution regarding the demand of dowry has got to be

disbelieved, the case of the prosecution regarding demand of dowry is to be held as surrounded by suspicion and the charge for the offence under Section 4 of the Dowry Prohibition Act is to be held as not proved beyond reasonable doubt.

15. So far as the other offence, namely the offence under section 498-A I.P.C. is concerned, it is the evidence of P.W.1 that she was frequently harassed by the petitioners stating that her parents were not in a position to meet the demands made by the petitioners for the additional dowry. It is her allegation that she was harassed and treated with cruelty, as her parents were not able to give additional dowry demanded by the petitioners. It is also her evidence that she was also harassed stating that she was in the hold of a ghost. It is her further charge that she and her child were sought to be eliminated by making an attempt to set them on fire after dousing them with kerosene. When the said evidence of P.W.1 is considered in the light of the evidence of the other prosecution witnesses, the improbabilities will come to light. Even in her own evidence, P.W.1 has admitted that she was employed in Chennai in the H.R. & C.E. department; that the first petitioner was the only person having the duty of maintaining his parents and that she did not like her father-in-law as he was a village menial, whereas all the members of her parents' family were well-educated. It is also her admission that she was not willing to live in a hut owned by the first petitioner. There is contradiction between the evidence of P.Ws.1 and 2 as to whether P.W.1 sustained any injury due to the cruelty allegedly caused to her by the petitioners; whether she took treatment for the same and whether any complaint was given? P.W.1's answer is in the negative, whereas P.W.2's answer in this regard is in the affirmative. There is no document to show that P.W.1 took treatment for any injury at any point of time and any complaint was given for the same. P.W.2 also has made a clear admission that his daughter was not able to live in her matrimonial home because she was employed in Chennai. Though P.W.9 would have ventured to state in the chief examination that the petitioners attempted on the lives of the P.W.1 and her child by making an attempt to set them on fire, during cross examination he admitted that he had no direct knowledge and that he was not aware of such incident and the other incidents that followed the same.

16. Many material contradictions found in the evidence of the prosecution witnesses with reference to their statements recorded under Section 161 Cr.P.C have been successfully elicited by proving such statements through the answers given by the investigating officer, namely P.W.10. Disregarding all the discrepancies pointed out above which would show that the prosecution story is surrounded by suspicions, which are reasonable, the courts below have chosen to arrive at a conclusion that the charges under Section 498-A IPC and Section 4 of the Dowry Prohibition Act have been proved beyond reasonable doubt. The said finding of the courts below is defective and infirm. The courts below have forgotten the proposition of law that the burden of proving the charges beyond

reasonable doubt is on the prosecution and that one cannot be punished on preponderance of probabilities. In this case though there is a little possibility of holding the case of the prosecution to be true, if the issue to be decided on preponderance of probabilities, it is obvious that the prosecution case suffers from reasonable suspicion and the charges for offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act stand not proved beyond reasonable doubt. As such this court comes to the conclusion that it is a fit case in which the benefit of the doubt should be given to the accused.

17. For all the reasons stated above, this court comes to the conclusion that the trial court committed an error in convicting the petitioners herein/accused for the offences punishable under Sections 498-A I.P.C. and section 4 of the Dowry Prohibition Act; that the learned Principal Sessions Judge also committed an error in confirming the said conviction and also the sentence imposed by the trial court; that both the courts below failed to appreciate the evidence in proper perspective; that both the courts below did not properly apply the principle of law relating to burden of proof in criminal trials; that due to such erroneous approach, the courts below have rendered a finding holding the petitioners herein/accused, guilty of the offences punishable under section 498-A I.P.C. and section 4 of the Dowry Prohibition Act, which are defective, infirm and liable to be interfered with and that therefore the petitioners are entitled to be ensured of their liberty giving the benefit of doubt to them. The Criminal Revision Case deserves to be allowed and the finding of the courts below holding the petitioners/accused guilty of the offences under sections 498-A and 4 of the Dowry Prohibition Act, conviction recorded for the said offences and the punishments imposed for the said offences, are liable to be set aside and the petitioners are entitled to be acquitted.

18. In the result, this criminal revision case is allowed. The judgment of the trial court made in C.C.No.289/2001 dated 10.10.2007 convicting the petitioners for the offences under section 498-A I.P.C. and section 4 of the Dowry Prohibition Act, which was confirmed on appeal by the learned Principal Sessions Judge, Villupuram, by the judgment of the appellate court dated 24.03.2008 made in CrI.A.No.42/2007, is hereby set aside. All the petitioners/A1 to A6 are acquitted of all the offences with which they stood charged. The bail bonds executed by the petitioners/A1 to A6 shall stand discharged. The fine amount, if any, paid by the petitioners/A1 to A6, is ordered to be refunded.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1.The Principal Sessions Judge, Villupuram
- 2.The Judicial Magistrate No.2, Villupuram
3. The Chief Judicial Magistrate, Villupuram
4. The Inspector of Police  
All Women Police Station, Villupuram,
- 5.The Public Prosecutor, High Court, Madras-104
6. The Superintendent, Central Prison, Cuddalore
7. The Superintendent, Central Prison, (Women) Vellore
8. The Section Officer, Criminal Section, High Court, Madras

CRL.R.C.No.458 of 2008

NM (CO)  
RH (21.1.11)



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