

BAIL SLIP

The accused Viz., M.P.Bhavani, W/o.MuthuPandian, Appellant/
Accused is directed to be released on bail as per Order of this
Court dated 23.03.2007 and made in M.P.No.1 of 2007 in
Crl.A.No.259 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 7.12.2015

DELIVERED ON : 21.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.259 of 2007

M.P.Bhavani

... Appellant/Accused

Vs.

State Rep. By
Inspector of Police,
Selaiyur Police Station
Chennai

.... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C.,
against the judgment made in S.C.No.553 of 2005 dated 28.02.2007
on the file of the Additional District Sessions Judge, Fast
Track Court No.1, Chengalpattu.

For appellant : Mr.N.Manoharan for
M/s.For & Fair Associates

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

Challenge in this Criminal Appeal is to the convictions and
sentences dated 28.2.2007 passed in Sessions Case No.553 of
2005 by the Additional District Court, (Fast Track Court No.1),
Chengelpet.

2. In the instant case, an incipient of 25 years old married woman due to consistent demand of dowry by her mother-in-law, has been forced to commit suicide along with her son, aged 1-1/2 years, without attaining efflorescence in their life.

3. The conspectus of the case of the prosecution is that the accused is the mother of one Barathuram and he married the deceased, viz., Vimala on 3.2.2003. After marriage, the accused has made consistent demand of dowry in the form of cash and jewels from the deceased. Since the deceased has not been able to brook the consistent demand made by the accused, she committed suicide by way of hanging and in that process, her minor son, aged 1-1/2 years has also passed away. After occurrence, one Bose, husband of sister of the deceased Vimala, has given a complaint (Ex.P.1) and the same has been registered in Crime No.558 of 2005.

4. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.11, has taken up investigation, examined connected witnesses and also made necessary arrangements to conduct inquest and accordingly, P.W.10 has conducted the same and filed Inquest Report as Ex.P.16. The Investigating Officer has continued investigation and also made arrangements to conduct autopsy on the bodies of the deceased and accordingly P.W.8 Dr.Thangamani has conducted autopsy and he found the following external and internal injuries on the bodies of the deceased.

"Post-Mortem Certificate in respect of B.Vimala:

Face congested, eyes closed, mouth closed. Tongue inside the mouth, Externally:-

Ligature mark about 1-2 cm. Brown colour obliquely placed in the neck, interrupted anteriorly, knot mark in the submental 2x2 cm region on cut section underlying tissues are pale/parchment. Hyoid intact Larynx, pharynx congested. Rib-cage intact. Heart empty lungs, liver, spleen, kidneys congested. Stomach-fully dig food - 200 m.. No fuel smell. Bladder empty. Ut. ovaries .. cut insitu. skull intact. Brain congested. mem - intact . Organs preserved for chemical analysis. Opinion reserved.

Post-Mortem Certificate in respect of Yuvaraj:

Ext.Injuries: Brown colour ligature mark 2 cm

width completely encircling the neck at the level of thyroid cartilage .

Cut section:-

Hyoid intact, larynx, pharynx congested.

Lungs, heart, liver, spleen, kidneys congested, skull intact, Brain congested. mem- intact. stomach-partly dig food & Visceras reserved for chemical analysis."

The Post Mortem Certificates have been marked as Ex.P.13 and P.14. After completing investigation, the Investigating Officer has laid a final report on the file of the Judicial Magistrate Court, Tambaram and the same has been taken on file in P.R.C.No.79 of 2005.

5. The Judicial Magistrate, Tambaram, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Chengelpet Division and the same has been taken on file in Sessions Case No.553 of 2005 and subsequently made over to the trial court.

6. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed first charge against the accused under Section 498-A, second charge under section 306, third charge under section 304-B of the IPC and the same have been read over and explained to her. The accused has denied the charges and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 11 have been examined and Exhibits P.1 to 21 and Material Objects 1 to 7 have been marked.

8. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against her, she denied her complicity in the crime. On the side of the accused, D.W.1 has been examined and Exhibits D.1 and D.2 have been marked.

9. The trial court, after hearing arguments of both sides and after contemplating the available evidence on record, has found the accused guilty under Section 498-A of the IPC and sentenced her to undergo 2 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. The accused has also been found guilty under section 306 of the IPC and sentenced her to undergo 5 years Rigorous Imprisonment

and also imposed a fine of Rs.1,000/- with usual default clause. She has also been found guilty under section 304-B of the IPC and sentenced to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10. The consistent case put forth on the side of the prosecution is that the son of the accused by name Barathraj has married the deceased Vimala on 3.2.2003 and subsequently both of them have lived as husband and wife in Thiru Vi.Ka II Street, bearing Door No.4/6, Rajakilpakkam. The accused has also lived along with them. Prior to 27.3.2005, the accused has made consistent demand of dowry in the form of cash and jewels from the deceased Vimala and due to her intolerable torture, she committed suicide on 26.7.2005 in the house of the accused and in that process, her 1-1/2 years old son has also passed away.

11. The prosecution has set the law in motion only on the basis of Ex.P.1, Complaint, wherein it has been clearly stated that prior to 20 days from the date of occurrence, both the deceased have come to the house of the defacto complainant and the deceased Vimala has reported that her mother-in-law has made consistent demand of dowry and subsequently, a compromise has been effected between the deceased Vimala and her husband and thereafter she has gone to her marital abode. The author of Ex.P.1, viz., Bose has been examined as P.W.1 and his wife Nirmala Bose (sister of the deceased Vimala) has been examined as P.W.2. The Assistant Director, Forensic Science Department, who collated the alleged suicidal note with the admitted signature of Vimala, has been examined as P.W.7. The Doctor, who conducted autopsy on the bodies of the deceased, has been examined as P.W.8. The Revenue Divisional Officer has been examined as P.W.10.

12. The trial court, after considering the cumulative evidence given by the witnesses mentioned supra coupled with documents filed by them, has found the accused guilty under the sections mentioned supra.

13. The learned counsel appearing for the appellant/accused has repeatedly contended that on the side of the prosecution, the alleged demand of dowry has not been clearly established. The specific evidence given by P.W.1 is that prior to marriage

of the deceased Vimala, her father has passed away and therefore, her maternal uncle has performed her marriage, but he has not been examined on the side of the prosecution and further on the side of the prosecution, basic ingredients of sections mentioned in the charges have not at all been established and the trial court, without considering the lack of evidence on the side of the prosecution, has erroneously found the accused guilty under the sections 498-A, 306 and 304-B of IPC and therefore, the convictions and sentences passed by the trial court are liable to be interfered with.

14. As a repartee to the contentions put forth on the side of the appellant/accused, the learned Additional Public Prosecutor has contended that in the instant case, even in Ex.P.1, the demand of dowry alleged to have been made by the accused has been clearly mentioned and in order to prove the said aspect, P.Ws.1 and 2 have given clear evidence and apart from their evidence coupled with Ex.P.1., the deceased Vimala has written Ex.P.2 on 25.7.2005, wherein it has been clearly stated that only due to harassment of her mother-in-law, she is going to take extreme step and the same has been proved by the evidence of P.W.7 and the trial court, after considering the replete evidence available on record, has rightly found the accused guilty under sections 498-A, 306 and 304-B of IPC. Therefore, the convictions and sentences passed by the trial court are not liable to be set aside.

15. The learned counsel appearing for the appellant/accused has drawn the attention of the court to the following decisions:

(A) 2013 (16) SCC 421 (Bholaram vs. State of Punjab), the Hon'ble Supreme Court has culled out the following ingredients so as to attract the penal provision of Section 304-B of IPC:-

"In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

b) such death should have occurred within 7 years of her marriage;

c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

d) such cruelty or harassment should be for or in connection with the demand of dowry; and

e) to such cruelty or harassment the deceased should have been subjected soon before her death."

(B) In (2014) 4 SCC 174 (Asha and another vs. State of Uttarakhand), in paragraphs 18 and 19, the Hon'ble Supreme Court has held as follows:

"18. On perusal of the evidence on record, we are of the view that the charge is not proved by the prosecution, particularly as the courts below have failed to notice that the prosecution has failed to prove that the dowry demand was made by the accused either at the time of marriage or subsequently as it has not produced convincing and cogent evidence in this regard. In this case, the evidence on record is not clear as to whether the demand for Rs.30,000/- as alleged to have been made by the accused is a demand for dowry with the deceased that can constitute cruelty or harassment by the accused. The High Court, after careful examination of the letter dated 28.6.1993, has found that it has been interpolated and that some changes have been made in the letter and some words were added to it. The courts below have erred in law in convicting the appellants herein by erroneously placing reliance upon the above so-called letter, wherein certain words were added with a view to make out a fabricated charge against them to secure the conviction of the accused persons.

19. We are of the view that the document Ex.Ka-3 was created for the purpose of

falsely implicating the accused to secure their conviction for the charge under section 304-B IPC. The said letter has been erroneously relied upon by the courts below to establish the allegation that there was cruelty or harassment by the accused persons on the deceased which has resulted in setting up of the circumstances for her death. The courts below have not noticed the important aspect of the case, namely, that the charge of dowry death, that there was demand on the deceased either before the marriage or soon before the death of the deceased made against the accused persons, should have been proved beyond reasonable doubt. The courts below have also failed to consider the relevant fact, namely, the appellants herein were not in the house at the time of the incident."

(C) In 2015 (2) SCC 629, (Baljinder Kaur vs. State of Punjab), the Hon'ble Supreme Court has held that for invoking Section 304-B of IPC, there must be nexus between dowry demand/dowry related harassment or cruelty and death.

16. On the basis of the legal backdrops enunciated by the Hon'ble Supreme Court in the decisions referred to supra, the Court has to carefully analyze the factual situation of the present case so as to attract the penal provisions of Sections 498-A, 306 and 304-B of IPC.

17. The author of Ex.P.1, Complaint, has been examined as P.W.1 and his wife has been examined as P.W.2 and P.Ws.1 and 2 are the sister's husband and sister of the deceased Vimala. In Ex.P.1, it has been specifically stated that prior to 20 days from the date of occurrence, the deceased Vimala along with her minor son has come to the house of P.Ws.1 and 2 and reported that the accused has tortured her by way of demanding money and jewels. Both P.Ws.1 and 2 have consistently stated the said aspect. Apart from the sufficient materials found in Ex.P.1 as well as evidence given by P.Ws.1 and 2, the prosecution has marked Ex.P.2, Suicidal Note alleged to have been written by the deceased Vimala. The letters found in Ex.P.2 have been collated

with admitted letters written by her, by P.W.7 and his specific evidence is that the letters found in Ex.P.2 as well as admitted letters of the deceased Vimala are identical. Therefore, Ex.P.2 has been clearly proved on the side of the prosecution. In Ex.P.2, it has been specifically stated that the accused is the sole reason for committing suicide by the deceased Vimala.

18. It is true that in Ex.P.2, the words of demand of dowry on the part of the accused have not been mentioned. But, at the same time, the materials found in Ex.P.1 as well as the evidence given by P.Ws.1 and 2 cannot be eschewed nor belittled. On the basis of the materials found in Ex.P.1 coupled with evidence given by P.Ws.1 and 2 and also on the basis of materials found in Ex.P.2, the Court can very well come to a conclusion that only due to demand of dowry on the part of the accused, the deceased Vimala has committed suicide and she has also decided to put an end to the life of her minor son. Therefore, in the instant case, plethora of evidence is available for the purpose of coming to a conclusion that soon before the death of the deceased, demand of dowry has been made by the accused.

19. The main argument put forth on the side of the accused is that P.W.1 has not stated about the demand of dowry. In fact, both P.Ws.1 and 2 have consistently stated about the demand of dowry on the part of the accused and further in Ex.P.1, it has been clearly stated that prior to 20 days from the date of occurrence, both the deceased have come to the house of P.Ws.1 and 2 and reported that the accused has directed to get money and jewels from P.W.1 and she has driven away the deceased from matrimonial abode. Therefore, the main contention put forth on the side of the appellant/accused is sans merit.

20. It is an admitted fact that P.W.1 has stated in his evidence that prior to marriage of the deceased Vimala, her father has passed away and due to that, her maternal uncle has conducted her marriage, but the prosecution has not examined him. Simply because the maternal uncle of the deceased Vimala has not been examined, the Court cannot reject the evidence given by P.Ws.1 and 2 and Ex.P.2. Therefore, the said contention put forth on the side of the appellant/accused cannot be accepted.

21. It has already been discussed and decided that necessary ingredients of Sections 498-A, 306 and 304-B of IPC are very much present in the instant case.

22. Even at the risk of repetition, the Court would like to say that by way of reading Ex.P.2, the contents of the same have really caused ripples in the pool of conscience of this Court. Only due to dowry torture made by the accused, the deceased Vimala has taken an extreme step of committing suicide and further she has not allowed her minor son to live in this world. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/accused are not having merits.

23. The trial court, after considering the overwhelming evidence available on record, has rightly found the accused guilty under the sections mentioned supra. In view of the foregoing elucidation of both factual and legal premise, this Court has not found any error nor illegality in the convictions and sentences passed by the trial court.

24. Considering the nature of offences committed by the accused and also considering the fact that the deceased Vimala has committed suicide at the age of 25 and also put an end to the life of her minor son, without blossoming in their life, no mitigating circumstances have arisen for awarding lesser sentence and further on the basis of the offences committed by the appellant/accused, even commiseration cannot be shown towards the appellant/accused.

In fine, this Criminal Appeal is dismissed. The convictions and sentences passed against the appellant/accused in Sessions Case No.553 of 2005 by the trial court are confirmed. If the appellant/accused is not in duress, the trial court is directed to immure her.

Sd/-

Assistant Registrar(CS V)

//True Copy//

ajr

Sub Assistant Registrar

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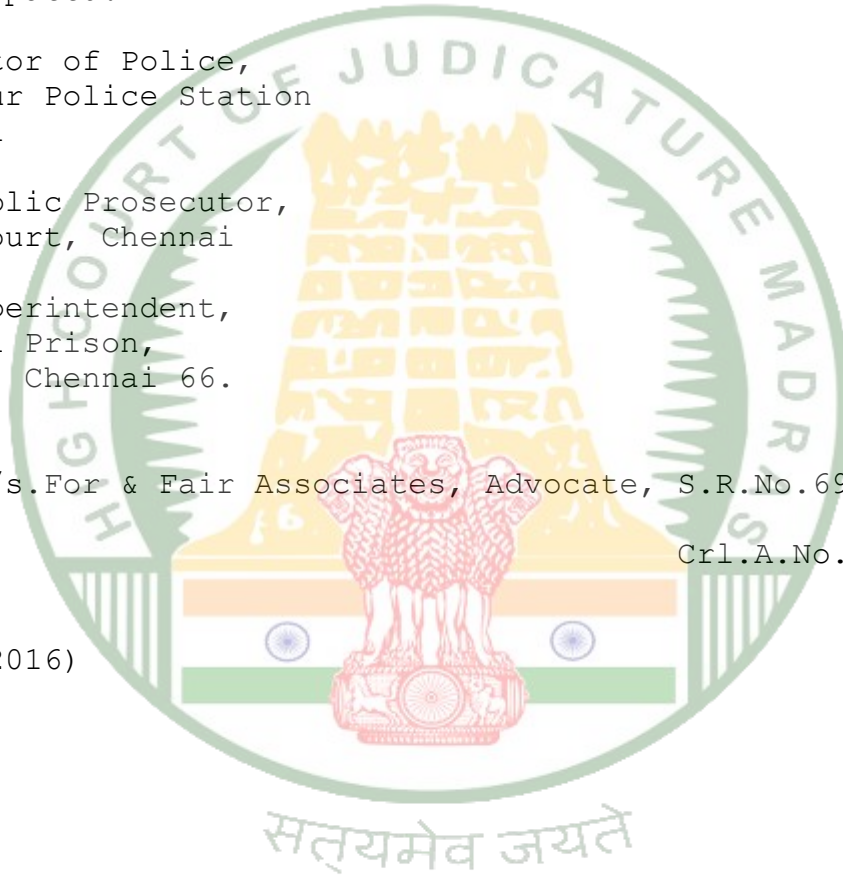
To

1. The Judicial Magistrate,
Tambaram.
2. The Chief Judicial Magistrate,
Chengalpet. (For information)
3. The Additional District Sessions Judge,
Fast Track Court No.1,
Chengalpattu.
4. Inspector of Police,
Selaiyur Police Station
Chennai
5. The Public Prosecutor,
High Court, Chennai
6. The Superintendent,
Central Prison,
Puzhal, Chennai 66.

+1cc to M/s.For & Fair Associates, Advocate, S.R.No.69433

Cr1.A.No.259 of 2007

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