

Bail Slip

The Appellants/Accused Viz., 1. Krishnan, 2. Periyammal are released on bail as per order dated 22.03.2007 made in CrI.M.P.No.1/2007 in CrI.A.No.279/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.279 of 2007

1. Krishnan
2. Periyammal

... Appellants

vs.

State rep. by
The Sub Inspector of Police,
Attur Police Station
Salem District

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence in Judgment dated 7.3.2007 in S.C.No.175 of 2006 on the file of Mahilar Sessions Judge Court, Salem (Additional District Sessions Judge, Fast Track Court-II, Salem)

For appellants : Mr.B.Vasudevan
For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The convictions and sentences dated 7th day of March, 2007 passed in Sessions Case No.175 of 2006 by Mahalir Sessions Court, Salem (Additional District and Sessions Court - Fast Track Court No.2, Salem) are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 7.2.2001, the first accused has married the deceased Tamilselvi. At the time of marriage, enormous amounts have been spent and various articles have been given in the form of marriage gift (rPh;thpir). The deceased has given berth to two daughters. The second accused is the mother of the first accused. The second accused has hurled burlesque against the deceased by way of saying that she has given berth to two daughters. Further both the accused have demanded a sum of Rs.1 Lakh from the deceased for constructing a house. Since the deceased has not been able to thole the demand made by both the accused, she consumed powder of

oleander and due to that, she passed away on 1.9.2005. Even without informing to the parents and relatives of the deceased, both the accused have incinerated the dead body of the deceased. After occurrence, the father of the deceased by name Selvaraj has given a complaint and the same has been registered in Crime No.753 of 2005. The complaint alleged to have been given by him has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.10, has taken up investigation, examined connected witnesses and after completing the same, laid a final report on the file of Judicial Magistrate No.1, Athur and the same has been taken on file in P.R.C.No.5 of 2006.

4. The Judicial Magistrate No.1, Athur, after considering the facts that the offences alleged to have been committed by both the accused are triable by Sessions Court, has committed the case to the trial court and the same has been taken on file in Sessions Case No.175 of 2006.

5. The trial court, after hearing arguments of both sides and upon perusing relevant documents, has framed first charge as against both the accused under section 498-A of Indian Penal Code, second charge against them under section 304-B of Indian Penal Code and third charge against them under section 201 of Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exhibits P.1 to P.15 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, Exhibits D.1 to D7 have been marked.

8. The trial court, after hearing arguments of both sides and after pondering the available evidence on record has found both the accused guilty under Section 498-A of the IPC and sentenced them to undergo 6 months Rigorous Imprisonment and also imposed a fine of Rs.500/- upon each of them with usual default clause. Both the accused have also been found guilty under section 304-B of IPC and sentenced to undergo two years rigorous imprisonment and also imposed a fine of Rs.500/- with usual default clause and the first accused has also been found guilty under section 201 of IPC and sentenced to undergo two years rigorous imprisonment and also imposed a fine of Rs.500/- 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 appellants.

9. The consistent case put forth on the side of the prosecution is that the first accused is the son of the second accused. The first accused has married the deceased Tamilselvi on 7.2.2001 and both of them have lived as husband and wife in the house of the first accused. Both of them have been blessed with two daughters. Since the deceased has given birth to two daughters, the second accused has used to deride her and further both the accused have demanded a sum of Rs.1 Lakh for the purpose of constructing a house. Since the deceased has not been able to fulfil the demand made by both the accused, she consumed powder of oleander and subsequently she passed away and after her death, the first accused, for the purpose of screening evidence, has incinerated the dead body of the deceased.

10. The trial court, after considering the specific allegations made against both the accused, has framed a first charge against them under section 498-A of IPC. In fact, this Court has perused the materials found in the first charge, wherein it has been clearly stated that the second accused has used to deride the deceased by way of saying that she has given birth to two daughters. Further, it is stated that both the accused have directed the deceased to get a sum of Rs.1 Lakh from her parents for the purpose of constructing a house. Therefore, it is quite clear that on the basis of cruelty alleged to have been made by both the accused, the first charge framed by the trial court against them is perfectly correct.

11. Now the Court has to look into the second charge. The trial court has framed the second charge under section 304-B of Indian Penal Code. At this juncture, it would be more useful to look into Section 304-B of the said Code, wherein it has been specifically stated that the alleged cruelty should be made in relation to demand of dowry.

12. It has already been pointed out that in the first charge, no materials are available so as to infer that there is a demand of dowry on the part of both the accused, whereas in the first charge, it has been simply mentioned that since the deceased has given birth to two daughters, the second accused has used to jape her and further both the accused have directed the deceased to get a sum of Rs.1 Lakh from her parental house. Therefore, the accused 1 and 2 have made a demand of Rs.1 Lakh from the deceased only for the purpose of putting up a construction of a house and further in the first charge, no specific mention has been made with regard to demand of dowry. Since in the first charge, no materials are available so as to infer that both the accused have made a dowry demand from the deceased, this Court is of the considered view that the second charge framed under section 304-B of Indian Penal Code is totally erroneous. Since the second charge framed against both the accused under the said section is totally erroneous, the Court need not decide the merits or demerits of the judgment passed by the trial court.

13. It has already been pointed out that second charge framed against both the accused is totally erroneous. Since the second charge framed against both the accused is totally erroneous, it is needless to state that the entire judgment passed by the trial court is liable to be set aside and the matter is liable to be remitted to the file of trial court.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed against the appellants/accused in Sessions Case No.175 of 2006 by Mahalir Sessions Court, Salem (Additional District and Sessions Court - Fast Track Court No.2, Salem) are set aside and the Sessions Case No.175 of 2006 is remitted to the file of trial court. The trial court is strictly directed to frame proper charges on the basis of the materials found on the side of the prosecution. The trial court is directed to conduct denovo trial. The fine amounts paid by the appellants/accused are ordered to be refunded to the appellants/accused forthwith. The trial court is directed to dispose of Sessions Case No.175 of 2006 before the end of December 2015 and report the matter to the Registry without fail. The appellants/accused are directed to make their appearance before the trial court by 13.10.2015.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ajr

To :

1. Mahalir Sessions Court, Salem
(Additional District and Sessions Court -
Fast Track Court No.2, Salem)
2. The Sub Inspector of Police,
Attur Police Station
Salem District
3. The Public Prosecutor, High Court, Chennai
4. The Judicial Magistrate, No.I, Attur.
5. The Chief Judicial Magistrate, Salem.

+ 1 cc to M/s. B. Vasudevan, Advocate SR.50294

CrI.A.No.279 of 2007

GP(CO)

Eu 05.10.15