

BAIL SLIP

The Appellants herein / Accused 1 & 2 namely,

1) Sivakumar  
2) Manimeghalai were directed to be released on bail as per order of this Court dated 28.03.2007 and made in M.P.No.1 of 2007 in CrI.A.No.309 of 2007 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM :

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.309 of 2007

1. Sivakumar

2. Manimeghalai

... Appellants/Accused 1 & 2

Vs.

State: Inspector of Police,  
Thittakudi Police Station

Cuddalore District

(Cr.No.4 of 2006 altered as  
Cr.No.157 of 2006)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and conviction made in S.C.No.146 of 2006 dated 14.3.2007 on the file of the Additional District Sessions Court (Fast Track Court No.3), Viruthahcalam, Cuddalore.

For appellants : Mr.A.Padmanaban

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

JUDGMENT

The conviction and sentence dated 14th day of March, 2007 passed in Sessions Case No.146 of 2006 by the Additional District and Sessions Court (Fast Track Court No.3), Viruthachalam are being challenged in the present Criminal Appeal.

2. The epitome of the case of the prosecution is that the first accused is the husband of deceased by name Latha and their marriage has been performed on 24.10.2005 in accordance with the Hindu rites and family custom and after marriage, both of them have lived in the house of the first accused. The second accused is the mother of the first accused and the third accused is his sister. After a lapse of 1-1/2 months, the accused have demanded 6 Soverigns of Gold jewels and a Motor Cycle by means of dowry. Since the deceased has not been able to brook the demand made by the accused, she committed suicide on 7.12.2005. After occurrence, the mother of the deceased by name Manoranjitham has given a complaint and the same has been registered in Crime No.157 of 2005. The complaint given by the said Manoranjitham has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer (P.W.16) has taken up investigation and also made arrangements to conduct autopsy. The Doctor by name Maheswari (P.W.13) has conducted Post Mortem and she issued Post-Mortem Certificate viz., Ex.P.6. In the meanwhile, the concerned Revenue Divisional Officer has conducted inquest. After completing the investigation, P.W.16 has laid a final report on the file of the District Munsif cum Judicial Magistrate, Thittakudi and the same has been taken on file in P.R.C.No.1 of 2006.

4. The District Munsif cum Judicial Magistrate, Thittakudi, after considering the fact 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, Cuddalore Division and the same has been taken on file in Sessions Case No.146 of 2006 and subsequently made over to the trial court.

5. The trial court, after hearing both sides and upon perusing the relevant records, has framed a charge against the accused under section 304-B of the Indian Penal Code and the same has been read over and explained to them. The accused have denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 16 have been examined and Exhibits P.1 to P.9 and Material Objects 1 to 5 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, D.Ws.1 to 5 have been examined and Exhibits D.1 and D.2 have been marked.

8. The trial court, after hearing both sides and upon perusing the available evidence on record has found the accused 1 and 2 guilty under Section 304-B of the IPC and sentenced them to undergo 7 years Rigorous Imprisonment. The trial court has acquitted the third accused. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been preferred at the instance of the accused 1 and 2 as appellants.

9. Before contemplating the rival submissions made on either side, it has become apropos to perorate the following admitted facts.

It is an admitted fact that the deceased has been given in marriage to the first accused on 24.10.2005. After marriage, both of them have lived as husband and wife in the house of the first accused. The second accused is the mother of the first accused and third accused is his sister. It is also equally an admitted fact that on 7.12.2005 at about 5 p.m., the deceased has committed suicide in the house of the accused 1 and 2.

10. The consistent case put forth on the side of the prosecution is that immediately after marriage, the accused 1 and 2 have demanded Jewels and a Motor bike from the deceased as well as family members of the defacto complainant.

11. The defence put forth on the side of the appellants/accused is that there is no dowry demand on the part of the accused and due to family dispute, the deceased has been driven to commit suicide.

12. The learned counsel appearing for the appellants/accused 1 and 2 has contended that the occurrence has taken place on 7.12.2005 and even on the previous day of occurrence, the defacto complainant, viz, the mother of the deceased has visited the house of the accused 1 and 2 and at the time of her visit, no report has been made by the deceased with regard to alleged demand of dowry and even in Ex.P.1, complaint, the defacto complainant has simply stated that she suspected to the effect that only due to demand of dowry, her daughter has committed suicide and likewise, one of the brothers of the deceased by name Veeramani (P.W.3), during the course of cross-examination, has clearly admitted that he has not stated to the Revenue Divisional Officer about the alleged demand of dowry and only due to family problem, the deceased has committed suicide and therefore, virtually, on the side of the prosecution, no evidence is available for the purpose of proving the alleged demand of dowry and the trial court, without considering lack of evidence on the side of the prosecution, so as to attract the penal provision of Section 304-B of Indian Penal Code, has erroneously found the

appellants/accused 1 and 2 guilty under the said section and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

13. In support of his contention, he has drawn the attention of the Court to the decision reported in (2010) 3 SCC (Cri.) 1154 (Durga Prasad and another vs. State of Madhya Pradesh), wherein, the Hon'ble Supreme Court has held that proof of subjecting victim to cruelty and harassment prior to death is not sufficient and it must also be proved that she committed suicide on account of such cruelty and harassment.

14. Even from a mere reading of the dictum given by the Hon'ble Supreme Court, it is easily discernible that mere cruelty and harassment are not at all sufficient, but the prosecution must establish that such cruelty as well as harassment are the sole cause for committing suicide.

15. In order to resile the contentions put forth on the side of the appellants/accused, the learned Additional Public Prosecutor has vehemently contended that the defacto complainant has been examined as P.W.1 and even during the course of chief examination, she has stated to the effect that immediately after marriage, the accused 1 and 2 have demanded Gold jewels and also a Motor bike and further she stated that unless those things are given, the deceased cannot live in their house and further during the course of inquest conducted by Revenue Divisional Officer, the first accused has been examined and in the Inquest Report, it is clearly observed that her mother has demanded those things from the deceased and only due to panic in the mind of the deceased, she committed suicide and therefore, on the side of the prosecution, enormous evidence has been adduced for proving the alleged demand of dowry and the trial court, after considering the overall evidence available on record, has rightly invited conviction and sentence against the appellants/accused 1 and 2 and therefore, the conviction and sentence passed by the trial court do not call for any interference.

16. For considering the rival submissions made on either side, the Court has to look into Section 113-A of Indian Evidence Act, 1872 and the same reads as under:

"113A. Presumption as to abetment of suicide by a married woman. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the

date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

17. A cursory look of the said Section would go to show that a primordial duty is cast upon the prosecution to prove that soon before death, there must be a demand of dowry.

18. The entire case of the prosecution hinges upon Ex.P.1, the complaint alleged to have been given by the defacto complainant, viz., P.W.1. In Ex.P.1, it has been simply stated that the defacto complainant has suspected that only due to dowry demand, her daughter has committed suicide. At this juncture, the Court has to look into the evidence given by P.W.3. During the course of cross-examination, he has clearly admitted to the effect that he has given statement to the Revenue Divisional Officer to the effect that only due to family dispute, the deceased has committed suicide. If really, the deceased has committed suicide due to continuous demand of dowry on the part of the accused 1 and 2, definitely in Ex.P.1, it would have been stated to the effect that the death would have occurred only due to dowry demand and likewise P.W.3, being the brother of the deceased, would have also stated to the Revenue Divisional Officer to the effect that her sister has committed suicide only due to dowry harassment on the part of the accused 1 and 2.

19. As stated earlier, in Ex.P.1, it has not been clinchingly stated to the effect that death has occurred only due to demand of dowry. Likewise, P.W.3 has also stated in his evidence that only due to family dispute, her sister has committed suicide.

20. It is seen from the evidence that on the previous day of occurrence, the defacto complainant has visited the house of the accused, but the deceased has not stated anything about the alleged demand of dowry. If, really, the accused 1 and 2 have made consistent demand of dowry to the deceased, soon before her death, definitely the same would have been conveyed to P.W.1. But, as stated earlier, P.W.1 has not stated to the effect that during her visit, her daughter has reported the alleged demand of dowry made by the accused 1 and 2.

21. Even at the risk of repetition, the Court would like to point out that in Ex.P.1, it has not been clinchingly stated to the effect that only due to dowry harassment made by the accused 1 and 2, her

daughter has committed suicide, whereas she has had only suspicion of dowry demand. Likewise, P.W.3 has given statement to the Revenue Divisional Officer to the effect that due to family dispute, her sister has committed suicide. Therefore, it is quite clear that after giving Ex.P.1 and also after giving statements to the Revenue Divisional Officer, some improvements have been made in the present case.

22. It is true that the concerned Revenue Divisional Officer has examined the first accused and in Ex.P.9, Inquest Report, it has been simply stated that the deceased has reported him that his mother has demanded Motorbike and subsequently, he advised his mother and that itself would not be sufficient for coming to a conclusion that the alleged demand of dowry would be the immediate cause for committing suicide on the part of the deceased.

23. It has already been pointed out that as per the dictum given by the Hon'ble Supreme Court, mere presumption would not be sufficient so as to attract the penal provision of 304-B of Indian Penal Code, but the prosecution has to prove that such harassment or cruelty should be the immediate cause for committing suicide. In the instant case, such evidence is completely lacking on the side of the prosecution. Since such evidence is completely lacking on the side of the prosecution, it is highly impossible and also improbable to come to a conclusion that the appellants/accused 1 and 2 have committed offence punishable under section 304-B of Indian Penal Code. In view of the foregoing enunciation of both factual and legal premise, this Court has found considerable force in the contentions put forth on the side of the appellants/accused 1 and 2, whereas the contention put forth on the side of the prosecution is not having substantive force and altogether this Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed by the trial court in Sessions Case No.146 of 2006 are set aside and the appellants/accused 1 and 2 are acquitted. Bail bonds, if any, executed by them shall stand cancelled.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ajr

To :

1. The Additional District Sessions Judge,  
(Fast Track Court No.3),  
Viruthahcalam, Cuddalore.
2. Inspector of Police,  
Thittakudi Police Station,  
Cuddalore District
3. The Public Prosecutor,  
High Court, Chennai
4. The District Munsif Cum Judicial Magistrate,  
Thittakudi.
5. The Chief Judicial Magistrate,  
Cuddalore.  
(For Information)
6. The Superintendent,  
Central Prison,  
Cuddalore.
7. The Section Officer,  
Criminal Section (Records),  
High Court, Madras.

+lcc to Mr.A.Padmanaban, Advocate, S.R.No.47134

Crl.A.No.309 of 2007

MSM(CO)  
CA(21/09/2015)

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