

Accused on Bail

The Appellants/Accused namely,

- 1.Sivakumar s/o Kathamuthu aged 37 yrs
- 2.Kathamuthu s/o Thangaiyan aged 62 yrs
- 3.Mallika w/o Kathamuthu aged 51 yrs

were enlarged on bail by this Court by order dated 07/05/2008 in CMP/No.1/2008 in Crl.A.No.361/08.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.361 of 2008

1. Sivakumar
2. Kahtamuthu
3. Mallika

... Appellants

vs.

State Rep. By the
Inspector of Police,
Pamani Police Station
Tiruvarur District

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.97 of 2007 dated 28.04.2008 on the file of the Assistant Sessions Judge, Mannargudi, Tiruvarur District.

For appellants : Mr.D.Veerasekaran

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

JUDGMENT

The convictions and sentences dated 28.04.2008 passed in Sessions Case No.97 of 2007 by the Assistant Sessions Court, Mannargudi are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the accused 2 and 3 are parents of the first accused. The first accused has married Punitha on 6.7.2006 and after some time, all the accused have caused dowry torture to the said Punitha and since she has not been able to fulfil the demand of dowry made by all the accused, on 2.9.2006 at about 6.15 a.m., in the house of the accused, she doused kerosene and set fire on her and subsequently she has been taken to Government Hospital, where she passed away on the same day at 10.15 a.m. After occurrence, the father of the deceased by name Ramasamy has given a complaint and the same has been registered in Crime No.66 of 2006.

3. On receipt of the complaint alleged to have been given by the defacto complainant, the Investigating Officer, viz., P.W.16, has taken up investigation, examined connected witnesses and also made arrangements for conducting Inquest and accordingly the concerned Revenue Divisional Officer (P.W.15) has conducted inquest and submitted his report (Ex.P.9). The Investigating Officer has also made arrangements to conduct autopsy on the body of the deceased and accordingly Dr.Indrani (P.W.13) has conducted Post-mortem and he found the following external and internal injuries on the body of the deceased:-

"Deep burning more than 90% lies on back in the possible altitude (universal flexion). Hair 1/2 low charred. Eyes closed. Mouth opened. Tongue in the mouth cavity. Teeth complete. Deep burns + all over the body except soles. Sole tear + R.M. + in all extremities. On opening the thorax- thorax well found .. No.of ribs .. Hyoid bone intact.. suit carbon particles present over the trachea & lungs. St.contains semifluid food particles nearing 150 ml. All int. organs congested and weighed normally Blood in peritoneal cavity dark cherry red in colour nt. N.S c/s empty Left Ovary N.S. Rt adnesal mass Rt. ovary extended to the above cricket ball size .. not cystic on c/s solid matter + Appendix N. Bladder empty. Spinal column intact. on opening the skull Membrane intact .. Brain congested. "

The Post-Mortem Certificate has been marked as Ex.P.6.

4. The Investigating Officer has conducted further investigation and after completing the same, laid a final report on the file of Judicial Magistrate No.1, Mannargudi and the same has been taken on file in P.R.C.No.6 of 2007.

5. The Judicial Magistrate No.1, Mannargudi, after considering the facts that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the Court of Sessions and the same has been taken on file in Sessions Case No.97 of 2007 and subsequently transferred to the file of the trial court.

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

7. On the side of the prosecution, P.Ws.1 to 16 have been examined and Exhibits P.1 to 11 and Material Objects 1 to 3 have been marked.

8. 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. No oral and documentary evidence have been adduced on the side of the accused.

9. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record, has found all the accused guilty under Section 498-A of the IPC and sentenced them to undergo 3 years Rigorous Imprisonment and also imposed a fine of Rs.2,000/- with usual default clause. The trial court has also found them guilty under Section 304-B of the IPC and sentenced them to undergo 8 years Rigorous Imprisonment. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellants.

10. The sum and substance of the case of the prosecution is that the first accused has married the deceased Punitha on 6.7.2006 and after some time, all the accused joined together and made consistent demand of dowry from her and since she has not been able to meet out the demand of dowry made by all the accused, on 2.9.2006, in the house of the accused, she doused kerosene and set fire on her and subsequently she passed away on the same day.

11. The defacto complainant, viz., father of the deceased has been examined as P.W.1. The mother of the deceased has been examined as P.W.2. Sister's son of P.W.1 has been examined as P.W.3. The cousin brother of P.W.1 has been examined as P.W.4 and brother's wife of P.W.1 has been examined as P.W.5. One of

relatives of P.W.1 has been examined as P.W.6. The brother of P.W.2 has been examined as P.W.7. The trial court, by way of believing their evidence, coupled with Inquest Report and medical evidence, has found all the accused guilty under Sections 498-A and 304-B of IPC.

12. The learned counsel appearing for the appellants/accused has contended that in the instant case, the first document that has become emerged is Ex.P.1, Complaint and the same has been given by P.W.1, wherein no mention has been made with regard to demand of dowry from the deceased alleged to have been made by all the accused and further Ex.P.1, Complaint has been registered under section 174 of Code of Criminal Procedure, 1973 and for the first time P.W.1 and other connected witnesses have stated the alleged demand of dowry in their 161 Clause (3) Statement and the trial court without considering Ex.P.1 and also without considering the fact that in the Inquest Report, it has been specifically stated to the effect that Panchayatdars have not found any reason for the death, has erroneously found all the accused guilty under sections 498-A and 304-B of IPC. Therefore, the convictions and sentences passed against the appellants/accused by the trial court are liable to be set aside.

13. The learned Additional Public Prosecutor has contended that the entire occurrence has taken place inside the house of all the accused and therefore, the entire burden lies upon them to prove as to why the deceased has doused kerosene and set fire on her and further the first accused has given a statement under section 313 of Code of Criminal Procedure, 1973, wherein it has been stated that the deceased has suffered from Stomach pain and due to that, she would have doused Kerosene and set fire on her, but to prove the same, no documents have been filed on the side of the accused and further P.W.1 and other connected witnesses have stated about the demand of dowry alleged to have been made by all the accused in their 161 Clause (3) statement and the trial court, after considering the evidence adduced by connected witnesses coupled with presumption available under section 113-B of Indian Evidence Act, 1872, has rightly found all the accused guilty under sections 498-A and 304-B of IPC. Therefore, the convictions and sentences passed by the trial court are not liable to be interfered with.

14. The specific case of the prosecution is that after some time from the date of marriage, all the accused have joined together and consistently demanded dowry from the deceased in the form of Fridge, Washing Machine and cash. In the first charge, it has been specifically stated that on 1.9.2006, all the accused have demanded the same from the deceased. At this

juncture, it would be more useful to look into the averments made in Ex.P.1, wherein it has been clearly stated that during month of Aadi, the deceased has been brought to the house of P.W.1 and during the month of Avani, she has been sent to her marital abode. In Ex.P.1, nothing has been stated about the demand of dowry alleged to have been made by all the accused. If really after some time from the date of marriage, all the accused have joined together and demanded dowry in the form of Washing Machine, Fridge and Cash from the deceased, definitely she would have stated all those things to her parents at the time of her visit during the month of Aadi. But, as stated earlier, no mention has been made in Ex.P.1.

15. It is seen from the records that for the first time, P.W.1 and other connected witnesses have introduced demand of dowry in their 161 Clause (3) statements and further even in the Inquest Report, it has been clearly stated that Panchayatdars have come to a conclusion that they have not been able to find out any reason for the cause of death. Only after getting statements under section 161 Clause (3) of the Code of Criminal Procedure, 1973 from P.W.1 and other connected witnesses, sections of law have been changed and investigation has been done in that aspect.

16. The learned Additional Public Prosecutor has solely relied upon the provision of Section 106 of Indian Evidence Act, 1872, wherein it has been clearly stated that if any fact is especially within the knowledge of a particular person, initial burden lies upon him to prove the same. It is true that the occurrence has taken place inside the house of the accused. As stated earlier, the first accused has given statement to the effect that the deceased has suffered from Stomach pain and also got treatment. Further, he opined that only due to her illness, she would have committed suicide. Since the first accused has assigned an acceptable reason in his statement for committing suicide on the part of the deceased, simply because the entire occurrence has taken place inside the house of the accused, as per the provision of the said Section, the Court cannot come to a conclusion that the entire burden lies upon them, since, in the instant case, the case of the prosecution is that the occurrence has taken place due to consistent demand of dowry alleged to have been made by all the accused.

17. It has already been pointed out that in Ex.P.1, no mention has been made with regard to demand of dowry alleged to have been made by all the accused from the deceased. Since in Ex.P.1, such demand has not been clearly mentioned and since the demand of dowry has been introduced for the first time only in the statements recorded under section 161 Clause (3) of Code

of Criminal Procedure, 1973, the evidence given by the witnesses mentioned supra, cannot be believed in.

18. The trial Court, without considering the fact that Ex.P.1 is the first document in the present case, wherein no mention has been made with regard to demand of dowry alleged to have been made by all the accused, has simply relied upon evidence of witnesses mentioned supra and found all the accused guilty under sections 498-A and 304-B of IPC. In view of the discussions made earlier, this Court is of the view that the conclusion arrived at by the trial court is totally erroneous and therefore, the convictions and sentences passed by the trial court are not factually and legally sustainable and altogether, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed against the appellants/accused in S.C.No.97 of 2007 by the trial court are set aside. The appellants/accused are acquitted. Bail bond, if any executed by them shall stand cancelled. Fine amounts, if any paid by them, are ordered to be refunded forthwith.

Sd/
ASSISTANT REGISTRAR (CS-V)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

ajr

To :

1. The Assistant Sessions Judge,
Mannargudi, Tiruvarur District.
2. The Inspector of Police,
Pamani Police Station, Tiruvarur District
3. The Public Prosecutor, High Court, Chennai
4. The Director General of Police,
Mylapore, Chennai.
5. The Judicial Magistrate,
No.I, Mannargudi
6. The Chief Judicial Magistrate
Nagapattinam

7. The Superintendent of central Prison,
Trichy

8. The Superintendent of special prison
for women,Trichy

9.The Section Officer,
Criminal Section, High Court, Madras

+1 CC to MR.D.Veerasekaran Advocate. SR.NO.68057

Crl.A.No.361 of 2008

CO-CNR
JD 31/12/2015



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