

Bail Slip

Appellants 1 & 2 in CrI A No.787/2008 (Accused 1 & 2 in S.C.No.109/2007 dated 7/10/2008 on the file of Sessions Court (Mahila Court) Coimbatore) were released on bail as per order of this Court dated 3/12/2008 in CrI MP 1/2008 in CrI. A.No.787/2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.787 of 2008

1. Muthurajaram
2. Guruvanandham

... Appellants/Accused 1 & 2

vs.

State by Asst. Commissioner of Police
Law and Order (West)
Coimbatore City

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and conviction made in S.C.No.109 of 2007 dated 7.10.2008 on the file of the Sessions Court (Mahila Court), Coimbatore Division.

For appellants : Mr.R.Rajaratnam

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

JUDGMENT

The convictions and sentences dated 7.10.2008 passed in Sessions Case No.109 of 2007 by the District and Sessions Court (Mahalir Neethimandram), Coimbatore are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the first accused is the husband of the deceased Shanthi and their marriage has taken place in the year 2005. At the time of marriage, her parents have given a sum of Rs.25,000/- and 7 Soverigns of Gold jewels as dowry. After marriage, all the accused have joined together

and compelled the deceased to get more dowry from her parents. Since the deceased has not been able to meet out the demands made by all the accused, she committed suicide on 31.1.2007/1.2.2007 in the house of the accused. After occurrence, one Srinivasan, as defacto complainant has given a complaint and the same has been registered in Crime No.5 of 2007. The complaint given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.14 has taken up investigation and examined connected witnesses. In the meanwhile, the Revenue Divisional Officer, viz., P.W.6 has conducted inquest and his Inquest Report has been marked as Ex.P.10. The Investigating Officer has made arrangements to conduct autopsy on the body of the deceased and accordingly, P.W.4, Dr.Mallika has conducted autopsy and she found the following external and internal injuries:-

"Appearances found at Post mortem:-

Moderately nourished body of a female aged about 25 years; finger and toenails were bluish in colour.

The following ante mortem injuries seen in the body:

1. Oblique ligature abrasion seen encircling the upper part of front and sides of neck measuring 26x1 cms., with a gap of 10 cms seen in the back of neck where it merges with the hairline,

The anatomical location of the ligature mark is as follows:-

- 4 cms below right ear
- 6 cms below chin and
- 6 cms below left ear

On bloodless dissection of neck:- The base of the ligature abrasion is hard and parchment like with no extravasation of blood in the superficial and deep planes of neck. Hyoid bone intact.

2. Horizontal parallel skin deep incised wounds, 3 in number seen 2 cm above left wrist over front of left forearm at an interval of 0.25 cm. Horizontal parallel skin deep incised wounds, 13 in number seen 6 cm above left wrist over front of left forearm at an interval of 0.25 to 0.15 cm over an area of 6 cm. The length of the skin deep incised wounds varies from 4 to 4.5 cm.

OTHER FINDINGS:

- Peritoneal & Pleural cavities - empty-Lungs-cut section congested.
- Heart right side chambers few cc of fluid blood, left side chambers empty,
- Coronaries - patent- Stomach contains about 50 ml of brown coloured mucus fluid, no specific smell, Mucosa congested - Small Intestine contains about 40 ml of bile stained and no specific smell, Mucosa congested. Liver, Spleen, Kidneys & Brain - cut section congested- Urinary bladder-kempty.
- Uterus- normal in size, cut section shows Copper T in size"

The Post Mortem Certificate has been marked as Ex.P.2. The Investigating Officer, after completing investigation, has laid a final report on the file of the Judicial Magistrate Court No.I, Coimbatore and the same has been taken on file in P.R.C.No.12 of 2007.

4. The Judicial Magistrate No.1, Coimbatore, 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, Coimbatore Division and the same has been taken on file in Sessions Case No.109 of 2007 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant documents, has framed first charge against all the accused under Section 4 of Dowry Prohibition Act, second charge against them under sections 498-A and 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.

6. On the side of the prosecution, P.Ws.1 to 14 have been examined and Exhibits P.1 to P.18 and Material Objects 1 to 3 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.

8. On the side of the accused, Exhibits D.1 to D.4 have been marked.

9. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused 1 and 2 guilty under Section 498-A of the IPC and sentenced them to undergo 1 year Rigorous Imprisonment and also imposed a fine of Rs.500/- with usual default clause. They have 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. During trial, the third accused has passed away. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused 1 and 2 as appellants.

10. The consistent case put forth on the side of the prosecution is that the first accused is the husband of the deceased. The second accused is her mother-in-law. The third accused is brother of the first accused. The marriage between the first accused and deceased has been performed in the year 2005 and at the time of marriage, the parents of the deceased have given a sum of Rs.25,000/- and 7 Sovereigns of Gold jewels by way of dowry and after marriage, all the accused have joined together and directed the deceased to get more dowry from her parents and further they have also tortured her by way of saying that the first accused is going to perform second marriage. Since the deceased has not been able to tolerate the torture alleged to have been given by all the accused, she committed suicide on 31.1.2007/1.2.2007 in the house of the accused.

11. On the side of the prosecution, the parents of the deceased have been examined as P.Ws.2 and 3 and sister and brother of the deceased have been examined as P.Ws.5 and 7. The Doctor who conducted autopsy has been examined as P.W.2. The trial court, after considering the evidence of vital witnesses coupled with documents, has invited convictions and sentences against the appellants/accused 1 and 2 as mentioned supra.

12. The learned counsel appearing for the appellants/accused 1 and 2 has contended that the parents of the deceased have been examined as P.Ws.2 and 3 and they have not spoken about the demand of dowry alleged to have been made by all the accused and further the specific evidence given by P.Ws.2 and 3 is that a house plot has been purchased and the same has been conveyed by the first accused prior to the occurrence and further P.W.3 has specifically admitted that both the first accused and deceased have lived happily and the trial court, without considering the evidence given by them, has erroneously found the accused 1 and 2 guilty under sections 498-A and 304-B of IPC and therefore, the convictions and sentences passed by the trial court are liable to be set aside.

13. Per contra, the learned Additional Public Prosecutor has contended that the parents of the deceased have been examined as P.Ws.2 and 3 and both of them have consistently stated about the demand of dowry alleged to have been made by all the accused and their evidence has been corroborated by the evidence given by the sister and brother of the deceased, who have been examined as P.Ws.5 and 7 and the trial court, after considering the

overall evidence available on record, has rightly found the accused 1 and 2 guilty under sections 498-A and 304-B of IPC and therefore, the convictions and sentences passed by the trial court are not liable to be set aside. Further, the learned Additional Public Prosecutor has contended that the trial court has rightly drawn presumption available under section 113-B of Indian Evidence Act, 1872.

14. For considering the rival submissions made on either side, the court has to meticulously analyze the materials found in the charges. It is an admitted fact that against all the accused, three charges have been framed. In the first charge, it has been specifically mentioned that at the time of marriage, the parents of the deceased have given a sum of Rs.25,000/- and 7 Soverigns of Gold jewels as dowry and after marriage, they directed the deceased to get more dowry from her parents' house. In the second charge, it has been specifically mentioned that the first accused has made arrangements to conduct second marriage. In the third charge, it has been mentioned to the effect that since the deceased has not been able to meet out the demand of dowry alleged to have been made by all the accused, she committed suicide. Therefore, in all the charges, predominantly it is mentioned to the effect that all the accused have demanded dowry from the deceased.

15. As adverted to earlier, the parents of the deceased have been examined as P.Ws.2 and 3. The specific evidence given by P.W.2 is that at the time of marriage, the accused have not demanded anything by way of dowry. During the course of cross-examination, he would say that one day prior to occurrence, the deceased has contacted him over phone by way of saying that a house plot has been purchased in the name of the first accused, whereas the second accused has demanded the first accused to change the same in her name and due to that, a problem has become emerged. Likewise, P.W.3 has also stated in her evidence as spoken by P.W.2. Further, P.W.3 during the course of cross-examination, candidly admitted to the effect that both the deceased and the first accused have lived happily.

16. In fact, this Court has groped the entire evidence adduced by P.Ws.2 and 3. Nowhere it is stated that all the accused have joined together and demanded dowry from the deceased. Further, absolutely there is no evidence on the side of the prosecution for the purpose of coming to a conclusion that soon before the death of the deceased, the accused have demanded dowry from her.

17. It has already been pointed out that all the charges have been framed only on the basis of demand of dowry alleged to have been made by all the accused, but the evidence given by P.Ws.2 and 3 is totally inverse. Further, P.W.3 has given

specific evidence to the effect that both the first accused and deceased have lived happily. Further, both P.Ws.2 and 3 have uniformly stated in their evidence about the purchase of house plot in the name of the first accused and subsequent problem, but the same has not been mentioned in the charges. Therefore, it is quite clear that both P.Ws.2 and 3 and other connected witnesses have given evidence totally contra to the materials found in the charges.

18. The trial court, without considering the vital infirmities found on the side of the prosecution, has erroneously found the first and second accused guilty under sections 498-A and 304-B of IPC. In view of the discussions made earlier, this Court has found considerable force in the contentions put forth on the side of the appellants/accused 1 and 2 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 1 and 2 in Sessions Case No.109 of 2007 by the trial court are set aside. The appellants/accused 1 and 2 are acquitted. Bail bonds, if any executed by them, shall stand cancelled. Fine amounts, if any paid by them, are ordered to be refunded forthwith.

Sd/-

Assistant Registrar(CO)

True Copy

Sub Assistant Registrar

To :

1.The Judicial Magistrate No.I,
Coimbatore.

2.-Do-Thro The Chief Judicial Magistrate,
Coimbatore.

3. The Sessions Court (Mahila Court),
Coimbatore.

4.The Superintendent Central Prison,
Coimbatore.

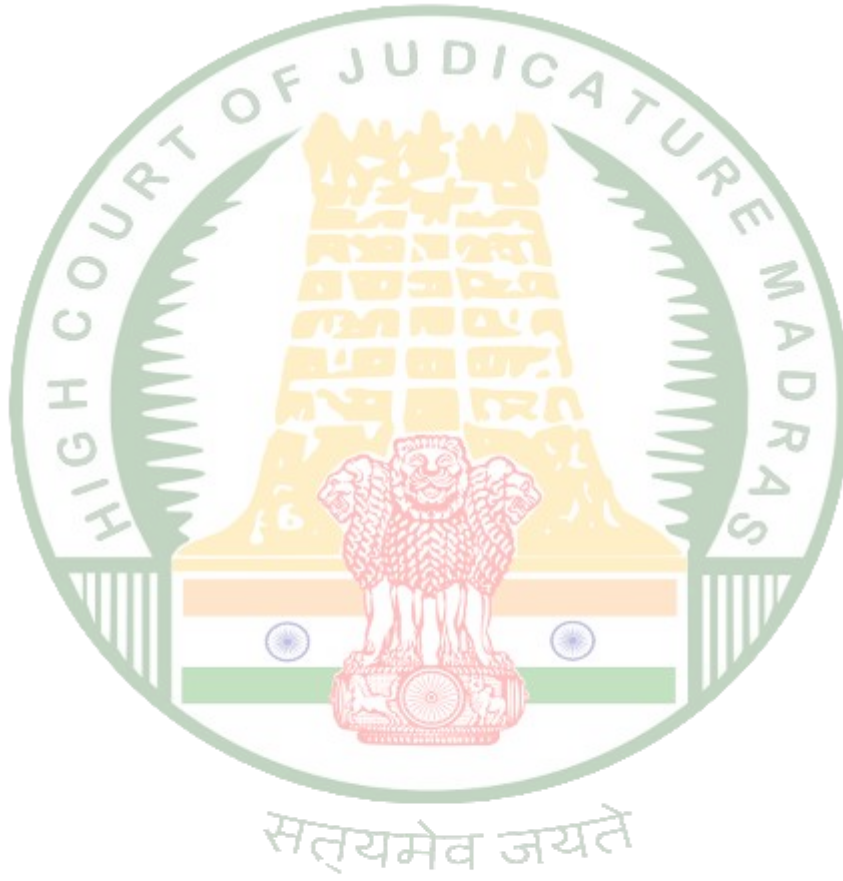
5. Asst. Commissioner of Police,
Law and Order (West)
Coimbatore City.

6. The Public Prosecutor,
High Court,
Chennai.

+lcc to Mr.P.Rajarathinam, Advocate Sr.65744

Cr1.A.No.787 of 2008

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srg 14/12/2015



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