

Bail Slip

The petitioner/Accused Viz., Rajamani, and Velumani, were released on bail as per order of this court dated 26.10.2007 and in CrI.MP. No.1/2007 in CrI.A. No.914/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.914 of 2007

1.Rajamani
2.Velumani

... Appellants

vs.

The State
Rep. by the Superintendent of Police,
Valapady Division,
Karipatti Police Station,
(Cr.No.8/06)

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment, dated 27.09.2007, passed in S.C.No.329 of 2006, by the learned Sessions Judge, Mahila Court, Salem, to set aside the conviction and sentence passed against them under Section 498A and 304-B of IPC and acquit them.

For appellants : Mr.K.V.Sridharan

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

JUDGMENT

The convictions and sentences passed, in Sessions Case No.329 of 2006, by the District and Sessions Court/Mahila Court, Salem, are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the second accused, by name, Velumani, is the husband of the deceased, by name, Kanagavalli and their marriage has been performed on 10.06.2005. After marriage, both of them have lived as husband and wife in the house of the second accused. The first accused is the mother of the second accused. Both of them have used to torture the deceased. On 8.1.2006, one Govindammal, aunt of the deceased, has come to the

house of the accused and asked them to send the deceased to her parents house, since the grandmother of the deceased has suffered from illness. But the accused have firmly refused and further they directed the deceased to stay in a cattle shed and due to the torture alleged to have been committed by both the accused, the said Kanagavalli has committed suicide on 8.1.2006. After occurrence, the father of the deceased, as defacto complainant, has given a complaint and the same has been registered in Crime No.8 of 2006 under Section 174 of the Code of Criminal Procedure, 1973. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating officer, viz., P.W.12 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy. The Doctor, by name, Mrs.Sujatha, has conducted autopsy and she found the following external and internal injuries:

"Injuries: An incomplete oblique ligature mark. 1.5 cms width 24 cms total length over the upper part front and side of neck above the level of thyroid cartilage.

On the right side of neck upper border of the ligature mark was found to be 3 cms below the right mastoid process and on the left side of neck the same was found to be 7 cms below the left mastoid process.

O/d pale dry and parchment like.

Hyoid bone was found in tact.

Extremities: finger toe nail found blush. Heart Normal. Cavities contained. Right side heart fluid blood. Left side heart empty. Coronary vessels: Patent. Great vessels: Normal. Lungs: both on is congested with oedematus. Hyoid bone: Intact. Stomach: 150 gms partly digested cooked rice food. No specific smell. Mucosa congested. Liver spleen and kidneys all are congested. Bladder empty. Uterus: Enlarged in size 22 X 21 cms. Female fetus present. 26 cms high. Pelvis membrane and spinal column intact. Brain: O/s. congested.

4. The Postmortem report has been marked as Ex.P5. Before conducting postmortem, the Revenue Divisional Officer, viz., P.W.9, has conducted inquest by way of examining the connected witnesses and his inquest report has been marked as Ex.P7. The investigating officer, after completing investigation, has laid a final report on the file of the Judicial Magistrate No.II, Salem.

5. The Judicial Magistrate No.II, Salem 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 Court of Sessions, Salem Division and the same has been taken on file in Sessions Case No.329 of 2006 and subsequently, made over to the trial Court.

6. The trial Court, after hearing both sides and upon perusing the relevant documents, has framed first charge against the accused under Section 498-A of the Indian Penal Code; second charge against him under Section 304-B of the 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.

7. On the side of the prosecution, P.Ws.1 to 13 have been examined and Exs.P1 to P13 have been marked.

8. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973, 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 also upon perusing the relevant evidence available on record, has found both the accused guilty under Section 498A of the Indian Penal Code and sentenced them to undergo three years Rigorous Imprisonment and also imposed a fine of Rs.1000/- with usual default clause. The trial Court has also found both the accused guilty under Section 304-B of the Indian Penal Code and sentenced them to undergo 10 years Rigorous Imprisonment. 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.

10. The learned counsel appearing for the appellants/accused has meticulously contended that in the first charge, no incriminating materials are available so as to attract the penal provision of Section 498-A of the Indian Penal Code. Under the said circumstances, Section 304-B of the Indian Penal Code cannot be invoked against both the accused and further, the trial Court has failed to appreciate the available evidence on record, but however, the trial Court has found both the accused guilty under Sections 498A and 304-B of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court are liable to be interfered with.

11. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, even though sufficient evidence is not available so as to attract the penal provision of Section 304-B of the Indian Penal Code, some materials are available so as to invoke Section 498-A of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court under the said

Section are legally and factually sustainable and to that extent, the judgment of the trial Court is liable to be confirmed.

12. As stated earlier, the appellants/accused have faced two charges under Sections 498-A and 304-B IPC.

13. It is an admitted fact that the marriage between the second accused and deceased has been performed on 10.06.2005. After marriage, both of them have lived as husband and wife in the house of the accused. With regard to first charge, it has been specifically stated that on 8.1.2006, one Govindammal has come to the house of the accused and asked them to send the deceased to her parents house so as to see her ailing paternal grandmother, by name, Alamelu and both the accused have refused to concede the demand made by the said Govindammal and further, both of them have directed the deceased to stay in a cattle shed.

14. The defacto complainant has been examined as P.W.1 and the said Govindammal has been examined as P.W.2. During the course of cross-examination P.W.1 has clearly admitted to the effect that his daughter has used to visit his house as she likes. The specific evidence given by P.W.2 is that during her visit to the house of the accused, both the accused have directed the deceased to stay in a cattle shed. If really both the accused have tortured the deceased, definitely they would not have permitted the deceased to sleep on a cot in a cattle shed. Therefore, it is quite clear that the torture alleged to have been made by both the accused cannot be believed in. Further, this Court has scanned the averments made in the first charge. Except some bald averments, no specific allegations have been made in the first charge with regard to alleged demand of dowry just prior to 8.1.2006. Therefore, it is quite clear that the allegation made in the form of first charge has not at all been proved on the side of the prosecution.

15. Now the Court has to look into the second charge framed under Section 304-B of the Indian Penal Code.

16. A mere reading of the said Section would go to show that soon before death, there must be a demand of dowry. In the instant case, no allegation has been made except some bald averments made in the first charge. Therefore, it is needless to say that no materials are available so as to attract the penal provision of Section 304-B of the Indian Penal Code.

17. The trial Court, without considering lack of evidence so as to attract both provisions of Sections 498-A and 304-B of the Indian Penal Code, has unnecessarily invited convictions and sentences against the appellants/accused and in view of the

discussion made earlier, this Court has found acceptable force in the contentions put forth on the side of the appellants/accused and altogether the present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The convictions and sentences passed by the trial Court in Sessions Case No.329 of 2006, are set aside and the appellants/accused are acquitted. Bail bonds, if any, executed by them shall stand cancelled. Fine amounts paid by them are ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msk

To :

1. The Sessions Judge, Mahila Court, Salem.
- 2.The Superintendent of Police,
Valapady Division,
Karipatti Police Station,
3. The Judicial Magistrate No.2, Salem.
4. The Chief Juudicial Magistrate, Salem, (information)
5. The Superintendent, Central Prison for women Vellore.
6. The Superintendent, Central Prison, Coimbatore.
- 7.The Public Prosecutor,
High Court, Madras

+1 cc to M/s.K.V.Sridharan, Advocate, sr.48244 (14/10/2015)

CrI.A.No.914 of 2007

MP(CO)
EU 24.09.15